The French contract practices in the urban public transport of passengers. The tactical level or a French paradox

Adrien Faugère

THE FRENCH CONTRACT PRACTICES IN THE URBAN PUBLIC TRANSPORT OF PASSENGERS

(The tactical level or a French paradox)

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Les pratiques contractuelles françaises dans le transport public urbain de voyageurs

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Le niveau tactique ou un paradoxe français

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[Résumé]
Dans un contexte de changements de l'organisation des transports public en Europe, ce rapport s'intéresse aux pratiques contractuelles dans les transports publics urbains de voyageurs en France. Le mémoire s'intéresse en particulier aux spécificités françaises et notamment la répartition des responsabilités du niveau tactique (définition du service et de ses caractéristiques). Il apparaît une inadéquation des tendances en France ; de plus en plus de risques supportés par l'exploitant, et de moins en moins de marge de manœuvre (les contrats sont de plus en plus détaillés ne laissant que peu d'adaptation pendant la vie du contrat).
Le rapport essaye d'analyser les raisons d'un tel paradoxe et de voir dans quelle mesure un rééquilibrage est possible.

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[Summary]
In a framework of changes in the public transport organisation in Europe, this report deals with the contracts practices in the urban public transport of passengers in France. The master thesis focuses in particular on the French specificities, notably the allocation of the tactical responsibilities (service design and characteristics). It appears an inadequation of the trends in France; more and more risks borne by the operators, and less and less of breathing space (contracts are more and more detailed, letting very few adaptations possible during the contract life).
This report tries to analyse the reasons of such a paradox and tries to see how it could get balanced.

[Key Words]
France, Europe, Public Transport of Passenger, Urban, contracts, public delegate services, tactical level, freedom of operators, risks

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PREFACE

This report is the closure of a six month internship in the consultancy Inno-V. It has several functions: it constitutes my internship thesis to obtain the engineer diploma from the ENTPE, and it is applicable to my master thesis in order to obtain the DESS TURP diploma from the university Lyon II and ENTPE. This report is also the paper written for Inno-V to present the results of my research work.

'Inno-V is a consultancy specialised in mobility and public transport. We use our knowledge to support governments as well as market parties dealing with strategic policy development, market development, inno–V-ation and tendering. Our approach to transport and road issues is multidisciplinary, with a clear focus on results. Our consultants and project managers combine vision, knowledge and experience to help our clients achieve their goals.' (See www.inno-V.nl website)

The Master degree TURP (Transports Urbains et Régionaux de Personnes = Urban and regional Transportation) depend on both University Lyon II (faculty of economic science and management) and the Engineering school ENTPE (Ecole Nationale des Travaux Publics de l'Etat = State School of civil Engineering). This professional master is a diploma at "Bac + 5" level. This formation is multidisciplinary and specialized, dealing with all the aspects of urban public transport for passengers in order to have a global comprehension of the transport system. Most of the professors are also professionals; thus, the formation is adapted to the current market need. (See www.let.fr/fr/enseignement/master/annee2/turp).

ENTPE is an engineering school based in Vaulx en Velin in the neighbourhood of Lyon (France). It is under the responsibility of Transport, equipment, tourism and sea ministry (ministère des Transports, des Equipements, du tourisme et de la mer). The School form specialists and generalists, in any field of land settlement and city management. Thanks to its six research laboratories, ENTPE has an international scientific reputation. (See www.entpe.fr)

The scope of the main project I worked on is an international comparison of contract uses between Public Transport Organizing Authorities and Operating Companies. The Research project has been initiated by Inno-V, in cooperation with KCW (Berlin) and TØI & Urbanet (Oslo). The main aim of the project is, for Inno-V, to improve the quality of its advisory work towards authorities by improving its

knowledge, its reputation and its position on the market. Another goal is to develop recommendations for better contracting practices.

The project focus in particular on the contracts which give an operator some service freedom at the tactical level (service design) and have some kind of incentives measures (like risks on the demand side or others measures). Those contracts are called 'incentivised contracts'. In particular, the main goal of such research is to understand what makes a successful incentivised contract. (Correspondence between supply and demand, fulfilment of political or social function, operating efficiency, successful tendering etc.). In the framework of my internship, my work was to focus on the French practices, where a single operating company is managing the whole network, but where the operator has almost no liberty to adapt the network alone.

My background about this topic in the beginning was kind of basic. And, even if I learnt a lot about the contract practices thanks to all the bibliographic work and the help of Didier van de Velde, this report does not claim to be the only truth. It is more the translation of what I understood about the French contract practices.

My research method was made following two steps: first my work was more bibliographic. I consulted lot of studies about the contract practices in order to obtain the basic knowledge of urban passengers transport contracts in European countries. Then, I also made some interviews in France to complete my knowledge and my understanding of what really happens on the field. I finally tried to analyse the French practices and wrote my thesis.

This preamble seems to me necessary to inform the reader about the context in which this report has been written.

ACKNOWLEDGEMENTS

I first want to thanks all the team from Inno-v; they have all helped me to adapt myself in this new environment. They helped me with my work, but also with my location and all my day to day matters. I give thanks to them to have given to me the opportunity to do this internship in the best conditions. In particular, I give thanks to Didier van de Velde, who was my supervisor, and who helped me in my work, despite the fact he was very busy with his own work.

I also want to thanks Patrick Bonnel and Bruno Faivre d'Arcier, in charge of the Master TURP, for their supervision, their comprehension and their advices.

I thank all the persons that helped me for the master thesis. I think about those who accepted interviews; Jean Michel Ferraris, deputy managing director of Keolis, Pierre Marty, lawyer working for Veolia, and Miguel Amaral, Ph.D. student in Economics at ATOM (Analyse Théorique des Organisations et des marches), also working for Veolia. I want to thanks those who helped me by giving me information by mail as well: Bruno Faivre d'Arcier and Maryline Bessone, use to be consultant, director of the section "Public Services" at Philippe Laurent Consultant, and is now setting up her own company.

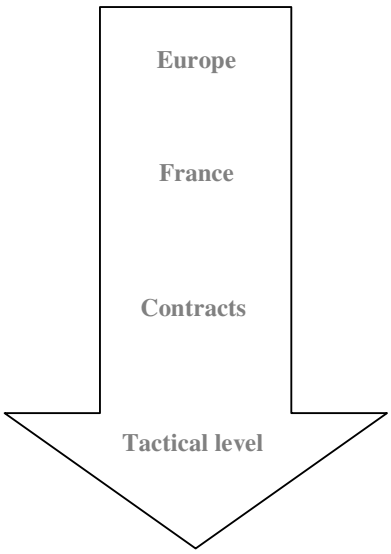
TABLE OF CONTENTS

TABLE OF ILLUSTRATIONS

Introduction

The contracts between the Organizing Authorities and the Operators define the relations between the two stakeholders and the allocation of the responsibilities. Thus, the contract is a master piece in the organisation of the urban public transport in a city. Nevertheless, during the last two decades, we have witnessed significant changes in the practices, with notably a growing trend in Europe of contracting and tendering use. In this framework of changes, what makes a successful contract? That is the question that generated the European research project; the participants wanted to improve their advising competencies. In order to go deeper in this thematic, one analyse of some interesting practices were necessary.

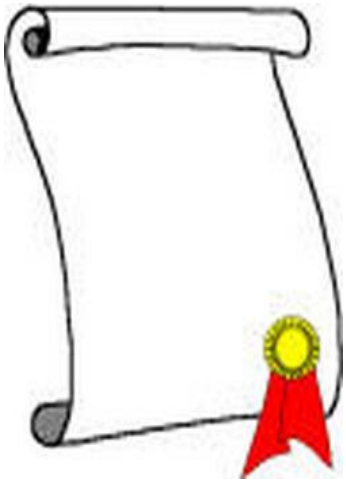
The French framework presents some interesting particularities, and various practices. Thus, this paper is focusing on France. The report is organised with a plunge from the European context into the Tactical level in the French contracts. Several studies have been written about the French contracts and the impacts of each organisational choice, but one particularity of this report, its value-added, is the focus on the allocation of the tactical level and the analysis of the French specificities impacts. This report deals with the French specificities and the reasons of their setting up compare to other European practices. Nevertheless, it does not evaluate the efficiency of the practices, partly because of a lack of quantitative data. In more, this subject is discussing in the European project. The work done here can be a base for the comparison.



The report is divided into two parts. The first one deals with the legal and institutional framework, in Europe and in France. It enables a better understanding of the European context and the basic vocabulary used in literature about urban public transport contracts. In this general European setting, the French legal framework is also presented and the organisation that follows from it.

The second part deals first with the specificities of the French contracts compare to what is done in other European countries. Then, a paradox of the French contracts is presented: the disequilibrium between risks borne by the operator and the tactical freedom it has. The last part deals with the impacts of the French specificities, as barrier or not, to solve the paradox presented above.

Part I - legal and institutional framework



The last two decades have witnessed significant changes in the organisational framework of local public transport in European countries. This development has been promoted by the European commission through the provision of an appropriate legal framework at the European level, as originally suggested in the Citizens' Network Green Paper and later reinforced and clearly indicated in the Communication "Developing the Citizens Network". In the same idea, very recently, the proposal for a Regulation on Public Services Obligation has been adopted by the European Parliament.

Those changes have been made in order to ensure the improvement in transparency, economic efficiency and quality of service. The changes have been made differently in each country, but one common feature is the growing usage of some form of competition.

In this first part, I will present first the European context with the regulation in effect nowadays and the organisational forms used. I will also present the different planning levels used in the current literature about urban public transport and, in particular, define the ***tactical level***. I will also present the usual contract classification based on the risks sharing. In this general framework, I will afterwards, in a second part, present the French legal framework and its translation on the field.

I- The European context

I- 1. Regulation on Public Services Obligation[1]

The European Regulation 1191/69 is the current one. It gives the authorities the right to impose Public Service Obligation (tariffs, quality requirements, …) to the operators with financial compensations. But this regulation mainly deals with railway. This legislation was extended to local transport in 1991 by the Regulation 1893/91. It has also introduced 'public service contract', but did not detailed the way to award it.

Since the end of the 1990s, most of European countries introduced competitive tendering in the awarding procedure, but differently, which had led to unbalanced situation for operators that could be protected in heir own country and could win contracts in other European Union members.

The European Commission decided to harmonize the procedure with a new European rule: proposal for a Regulation on Public Services Obligation. The first study is dated 1998. After almost ten years of discussions and compromises, an agreement has been found, and the European Parliament approved the text in May 2007. The text is expected to be (finally) approved by the Council of Ministers in the autumn of 2007, and expected to come into effect by 2009.

The main points of this simpler version of the proposal are as following:

- Signing a Public Service contract is an obligation to compensate operators for public service obligation (by financial means and/or granting exclusive rights).
- Open, fair, transparent and non-discriminatory competitive tendering keeps the basic principle to award contracts, and preselection and negotiation are allowed.
- There are only three cases where direct awarding is possible: when the authority operates itself or if it is an internal operator; if the operator is a small one, and when it concerns rail transport (except track-based modes such as metro and tramways).
- Contracts are limited to ten years for bus and fifteen years for rail-based services.

[1] Van de Velde, 2007, A new regulation for the European pubic transport, presented à the Thredbo conference 2007 in Australia.

Compare to the initial proposal, the adopted text is simpler, shorter and has lost in part the idea of 'always tendering'. To reach the approval, numerous compromises have been made, and then, very little things will change for some state members. Anyway, it has the advantage to clarify the European legal framework (every Public Service Obligation should generate a contract) and it is adapted to the current situation. And even if exceptions have been agreed, it shows a shift towards more tendered practices.

I- 2. The organisational forms

The regulatory framework specifies the way in which transport services are designed, planned and produced. First of all, I would like to present the vocabulary and the organisation (forms, levels of planning, type of contract) generally accepted in the current literature about public transport. This following information is mainly taken from D.M. van de Velde in the *Organisational forms and entrepreneurship in public transport* (1999), also presented in the MARETOPE European research (2003).

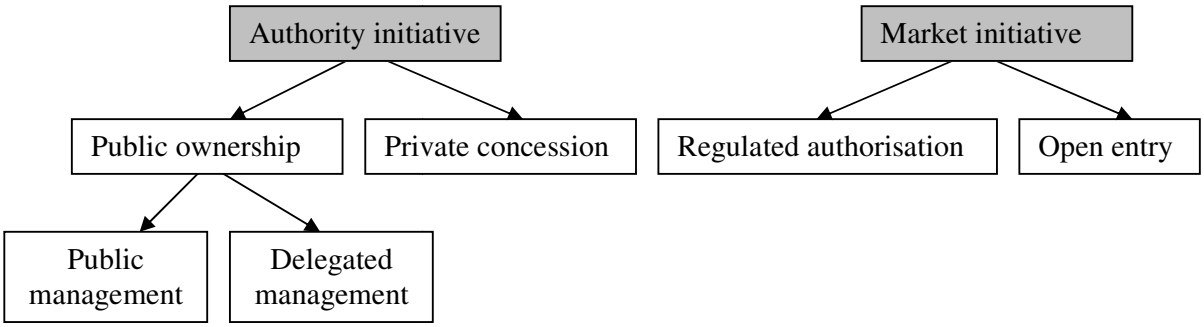
It is generally accepted to distinguish two main organisational forms; Authority initiative, and Market initiative. This distinction is closely related to the legal framework of each European country, and shows a fundamentally difference in the organisation of the supply.

Authority initiative; the authorities have the legal monopoly of initiative. All production or market entry is the result of a conscious initiative on the side of the authority to produce or request the production of services. (ex France and Belgium). It is usual to make a distinction between "private concession" and "public ownership" (which can be managed by public authorities or through delegated management).

Market initiative; the supply of transport services is based upon the principle of autonomous market entry resulting from a market process with more or less regulatory checks at the entrance. (Great Britain and Germany). Market initiative regimes can be "open entry" regimes (fully competitive) or "regulated authorisation" where the operators are granted a more or less permanent and extensive levels of exclusivity. The "regulated authorisation" regime can be dominated by private or public companies.

Those distinctions are mainly made at a theoretical level. In the reality, the organisations are often combinations of those "pure forms".

Figure 1: organisational forms in public transport of passengers[2]



I- 3. The planning levels

The planning and control systems can be divided into three hierarchical levels of decisions, as introduced by van de Velde (in 1999). The usual denominations of those levels are as following:

- **Strategic level:** formulation of general aims and service characteristics. This include such topics as the profit and market share aims, the area of the supply, the general description of services, the definition of target groups and the positioning of the service in relation to substitutes and complements. Van de Velde defined this level as the core of 'entrepreneurship' and the actor responsible for this level as the 'entrepreneur'.

  In short, this level defines '*what do we want to achieve?*'

- **Tactical level:** making decision on acquiring means that can help reaching the general aims. In fact, at this level, the general aims of the strategic level are translated into service characteristics: definition of routes, timetable, vehicles, fares, commercial aspects, ...

  This can be summarised in '*What product can help us to achieve the aims?*'

[2] D.M. van de Velde, Organisational forms and entrepreneurship in public transport, 1999

- Operational level: makes sure the orders are carried out, and that this happens in an efficient way. This is the translation of the tactical level into a day-to-day practice with such things as the management of the sales staff, the drivers, the vehicles and the infrastructure.

It is simply *the way to produce the product*.

It is also important to notice the definition of the hardware and the software for public transport. The hardware side is the production of vehicle-kilometres. The software side is everything that can help the sell of the hardware, which means transforming vehicle-kilometres into passenger-kilometres.

I- 4. Usual classification of contracts: risk allocation

The allocation of responsibilities and sharing of risks between the different stakeholders of the system is an indispensable tool for the management of public transport. Thus, one of the most important dimensions to define the main contract arrangement is in relation with the risks sharing. Two kinds of risks are defined;

The Production risk (or industrial risk), which is the risk associated to the production costs or operating expenses.

The Revenue risk (or commercial risk), which is related to the receipts or the sale of the transport service.

Thus, the various possibilities of allocation of the industrial and the commercial risks can help to classify the main contract uses.

Management contract: The Organizing Authority (OA) takes on both the commercial (revenues) and the industrial (production costs) risks. It takes on full responsibility for the risks. The OA takes the revenues and reimburses the Operator for its expenses. The operator's remuneration depends on the volume of the services supplied.

Gross cost contract: The Operator takes on the industrial risk alone while the OA bears the commercial risk. The OA pays the Operator a fixed sum determined as a function of forecast operating cost, whatever their real amount.

Net cost contract: The operator bears both commercial and industrial risks. He cashes the revenues from passengers. The OA pays a contribution to compensate the difference between anticipated total operating costs and revenues.

Figure 2: classification of the main contracts by the risk sharing

		Industrial risk born by	
		OA	Operator
Commercial risk born by	OA	Management	Gross cost
	Operator		Net Cost

This representation of contracts is the most used one but it's not faithful to the reality; in fact contractual arrangements are more various. Some of the practices, especially recent contracts, are more complex. The risks are often shared between the two stakeholders. One can also noticed that no contracts are in the case of the industrial risk borne by the Organizing Authority and the commercial risk borne by the Operator; indeed, usually, the commercial side is more the responsibility of the OA than the industrial side. The first responsibility which could be given to the operator is then on the industrial aspect.

This part has allowed a better understanding of the general context of the practices. In this context of framework changes, it is necessary to be able to classify the uses, in the 'regime' (authority or market initiative), the allocation of the responsibilities between the main stakeholders at the strategic, tactical and operational levels, and the type of contract used. It has also showed the large sample of organisation that we can find.

Now that the basements of the organisations are set up, I will now focus on the French case, trying to present its framework thanks to the classification presented before.

II- The French legal framework

II- 1. Legal context

Public transport, especially in France, is considerate as an important element on both the economical aspect and the social aspect. That can explain the strong involvement of the state in this sector. Indeed, the framework of the French public transport is now regulated by two recent laws; the Domestic Transport Orientation Law (LOTI) and the "Sapin" Act.

The so-called LOTI law: the responsibility of public transport

The Domestic Transport Orientation Law (**LOTI**, Loi d'Orientation des Transports Intérieurs) of December the 30th 1982 is the basic law on the organisation of the publics transport services. The most important point is that it gave the Organizing Authorities (OA) the responsibility of managing urban public transport. It has also explained the right of accessibility to transport for citizens with reasonable accessibility conditions, in quality and at an affordable price and clarified the relationship between Organizing Authorities and Operators by making as an obligation the signature of a contract.

The responsibility of the OA has been strengthened by some additional law:

Law on Air and Energy Use (LAURE, December 30th 1996) focused on the environmental aspects, and the need to develop the public transport and all clean transport modes.

The so-called "Voynet Law" of June 25th 1999, set up a new specific dimension for projects including rural areas ('Pays') and encouraged authorities to set up sustainable development projects.

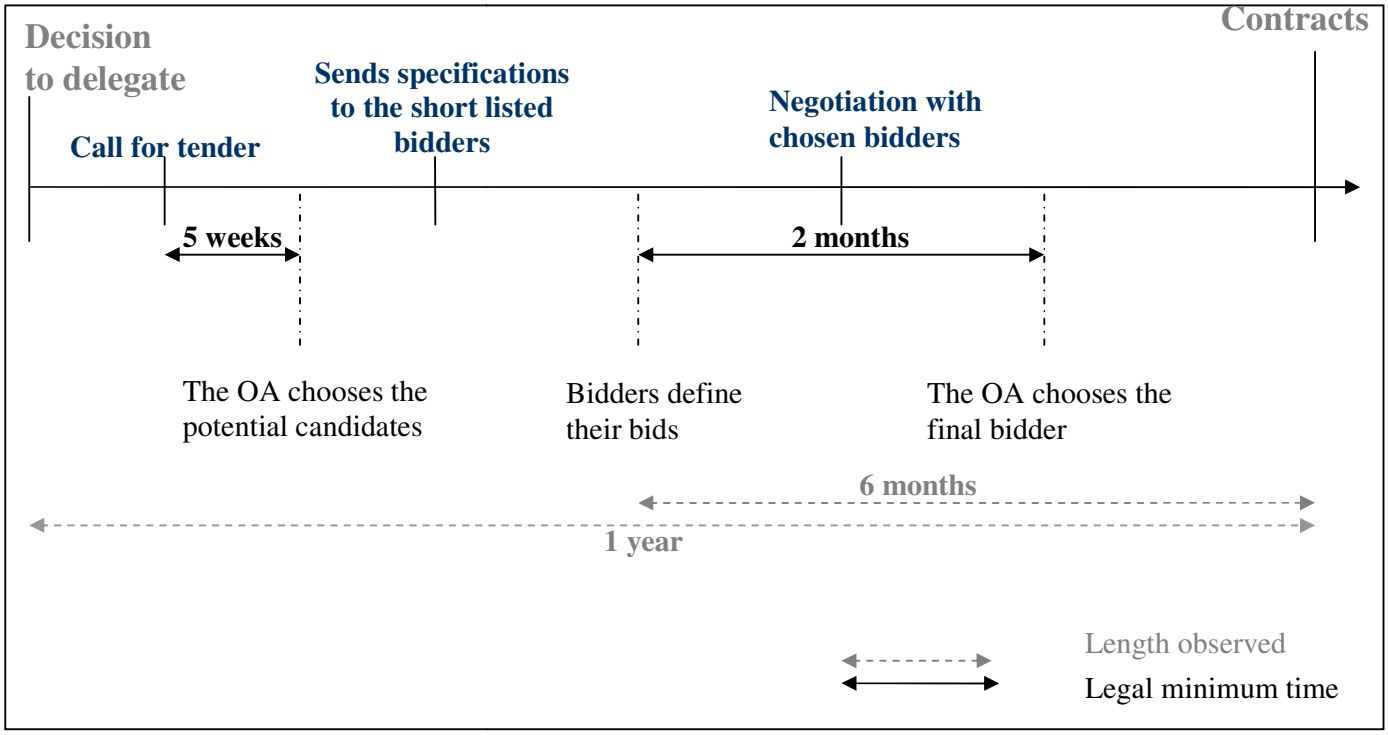
The so-called "Chevenement Law" of July 12th 1999, intended to strengthen cooperation between local authorities. It funded urban authorities and gave them the responsibility of organizing urban public transport.

Law related to Urban Solidarity and Renewal (SRU, December 13th 2000), upgrades town planning procedures and strengthens coherence between urbanism, the habitat and mobility.

Sapin Act: the new awarding procedure

Before 1993, the award procedure was based on negotiation with one operator, and the Organising Authority could choose the operator according to the principle of "intuitu personae". In other words, that means that the Local Authority was free to choose the operator on the basis of mutual trust.

Figure 3: The Sapin Act procedure for tendering



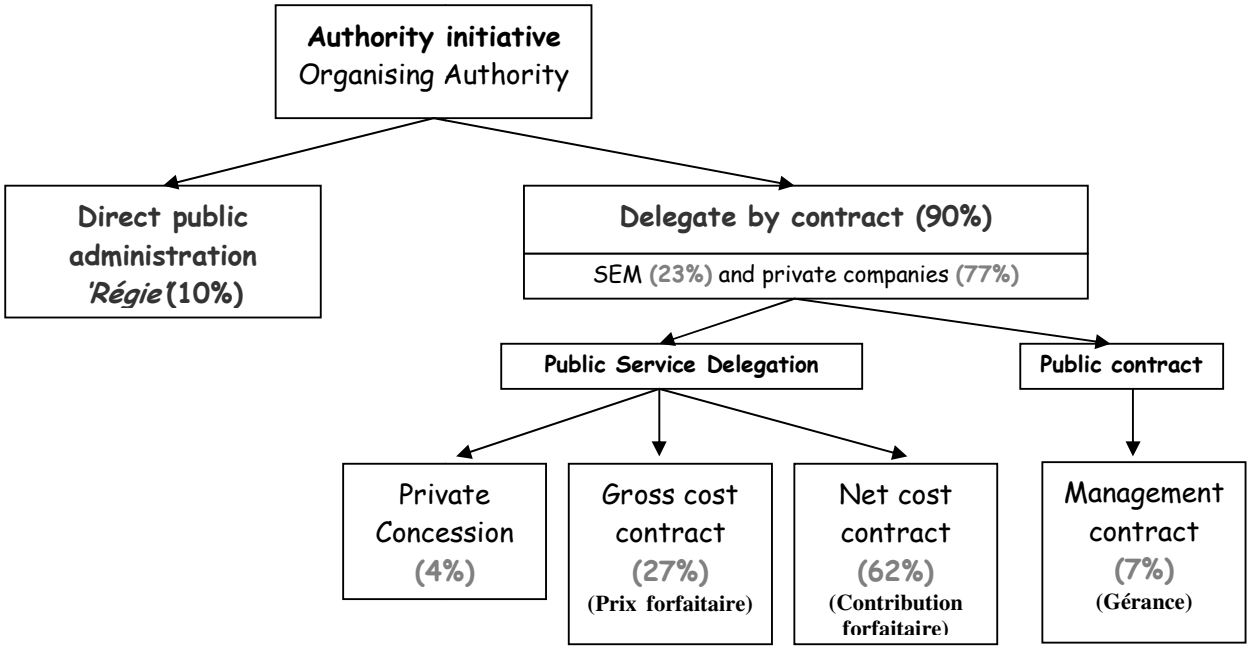
Since the Sapin Act in 1993, the use of competitive tendering is compulsory and explicit and detailed rules have been provided for the attribution process. The operators are now selected according to a three-step procedure (CERTU 2003[3]). First the OA publishes a **call for tender** with service specifications. After that, the OA draws a list of potential candidates. Second, the authority provides to the **selected candidates** a document with more details. The candidates make their bid on the basis of this document. Then, the OA chooses bidders and enters into separate **negotiations** to determine the contractual terms. After what the authority chooses the winner.

[3] CERTU, January 2003, Urban public transport in France, Institutional organization

The principle of the law is to have a base of the prices thanks to the tendering procedure and then discussing the network design in the negotiation process. What is specific to French framework is that even if, thanks to the so-called "Sapin act", the bidders are selected according to predefine criteria, the last choice is made by the authority in concordance to its intuitu personae.

II- 2. The French organisational form

Figure 4: French framework for public transport organisational forms[4]



In relation to the European organisational forms presented before, the French organisational form is under the Authority initiative. Direct managing is one of the solution (it is called 'Régie'), but is not so used; only 10 % (CERTU, 2003) of the networks in France are directly managed by the authority. In most of the cases, the OA delegates by contract the operating to a private company or a semi-public company. Then, it can choose between public delegate services or public contract.

But the distinction between those two modes of managing is quite subtle, even for professionals (but the consequences in term of procedure are very important). This distinction will be developed further (see intuitu personae), but it seems those

[4] The sources: GART, 2004, Coordinated Approaches to expanding Access to Public Transportation, **Urban Public transport in France, CERTU, 2003. (The Data are in % of networks)**

management contracts are Public Contracts because the operator bears not enough risk.

In most of the case, the infrastructure, equipment and rolling stock belong to the OA, which make them available to the operator. But for the concession contracts, the operator has to realize the investments in dedicated infrastructure, equipment and rolling stock, but the contract is for a longer duration.

II- 3. The Organizing Authorities

The mission of the OA is central in the French public transport organization: to organize urban public service and define mobility policy with the other stakeholders involved. In concrete, they formulate urban mobility plans (introduced by LOTI Law, documents drawn by the OA and defining the general principles of the transport policy), define transport supply, finance the development of networks (principally thanks to the Transport Tax) and promote the public transport service. The OA is responsible for those missions in the Urban Transport Area (PTU, Périmetre des Transports Urbains).

The OA can have different legal status; they can be inter-local authority boards, inter-communal authorities, urban authorities, greater urban authorities, joint management boards and new town joint management boards. Each legal status has different responsibilities and obligatory competencies about the public transport. In fact, the choice of one status implicates a more or less will to involve in public transport setting up.

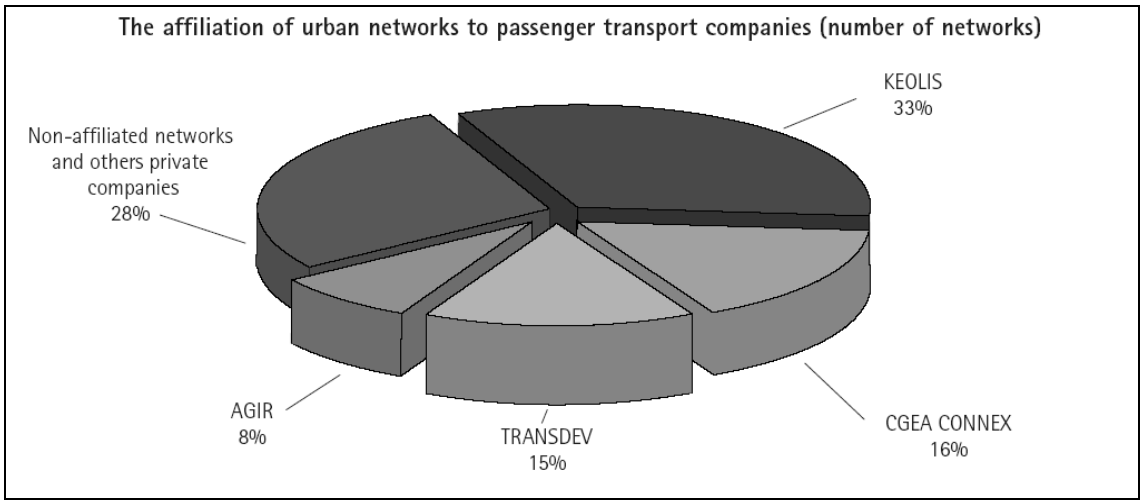
In the 1980s, the urban and inter-urban public transport authorities have set up an organization, the GART (Groupement des Authorités Responsables de Transport), which objective is to provide information and advices to the Authorities. It also represents the local authorities at a national and European level (252 authorities are members of the GART).

II- 4. Operation

The OA has the responsibility to choose a regulatory policy in order to organise the public transport services in its area. As we can see in the figure 4 above, direct management by an administration is possible (‘Régie’) but not so used. Most of the OA choose to delegate by contract the operation. It is worth to notice that since

1993, the so-called Sapin Act, the OA must issue a tendering procedure to choose the operator for delegate contracts (This point will be discussed further). In the case of delegated management, we must make a distinction between companies whose share capital is wholly private and semi-public companies (SEM).

Figure 5: source: Survey by CERTU-GART-UTP-DTT, 2000



As we can see in the Figure 5 (taken from a survey by CERTU – GART – UTP – DTT in 2000), the most important private companies are KEOLIS (33%[5]), TRANSDEV (15%) and VEOLIA Transport (16%). AGIR is an association created by authorities, and the operator members are closely linked to the public sector (SEM, administrations and EPICs). Its market share is around 8%. There are also networks operated by companies non-affiliated to Agir or to one of the three main operators; but these companies mainly operate the network of smaller metropolitan areas.

Generally, the OA delegates the operation of its network to a single operator company. Until recently Perpignan was the only network operated by two operators (Spanish companies; TRAP SA and SUBUS). One can also notice that only a few networks are operated by foreign operators; Narbonne's network and Antibe's network are also operated by a Spanish company and Dôle and Bourg-en-Bresse (2006) are operated by the Swiss post.

A federation of privates companies also exist: the Public Transport Union (UTP). It gathers a large number of urban transport network operating companies: in 2007, 170 companies are direct members and 70 are associated members of the public transport federation. Its main objectives are to represent its members' interest, to give

[5] These percentages are the market share in number of networks, and are taken from CERTU, 2003.

information and advices to its members, to make partnership with actors in passenger transport and to promote the public transport.

The French framework of the urban public transport is defined by two in laws: the LOTI that defines the allocation of the responsibilities and the Sapin Act which detailed the procedure for the contract procurement. In the French context, the Organizing Authorities have a very large responsibility concerning the public value Transport.

We just saw the French practices present a large panel of contract uses. In the following part, I will focus on the contracts in France and their specificities. I will then focus in particular on the allocation of the responsibilities between the OA and the operators at the tactical level.

Part II – The French contracts and their tactical level

Until recently, the French legislation concerning the public transport was more elaborated than the European one (Anne Yvrande-Billon, 2005[6]). Indeed, the new European regulation - the proposal for a Regulation on Public Services Obligation just approved by the European parliament in May 2007 - will not generate change in the French public transport organisation (except for the Region Île-de-France which has a very specific organisation in France). In her paper from 2005, Anne Yvrande-Billon reminds that it is even sometimes said that the proposal of the regulation of UTP service is inspired by the French model. In this frame, the French case seems to be very interesting, especially with its wide diversity of kind of contracts.

What I will focus on in this second part is the interest of the French case with its particularities. What are the French specificities? What are the impacts at the tactical level? What level of tactical freedom do the operators have? Can the operator get more freedom and how?

In order to answer to those questions, I will first present the French specificities to explain in which measure the French case is original. I will then focus on the allocation of the tactical level, which seems to be paradoxical in France. In the last part, I will analyse the barriers to the operator's tactical freedom, and try to see how much it could be improved.

[6] Anne Yvrande-Billon, 2005, The attribution process of delegation contracts in the French urban public transport sector: why competitive tendering is a myth.

I- What makes the French contracts particular

Several specificities are interesting to understand why the French contracts between Operators and Authorities are as they are in France. Before going deeper in the tactical level, I would like to present some originality of the French practices at the contractual level in order to understand the context. That concerns the negotiation during the procedure, the rolling stock property, the French 'Transport Tax' to finance the public transport and the area tendered in one contract.

I- 1. Negotiation and intuitu personae

As presented earlier, one of the specificities of the French contract procedure for the **public service delegation** (DSP) in the Sapin Act is the combination of tendering and negotiation (*intuitu personae*). This procedure is very different from the one for Public contracts.

Negotiation

In Europe, one can notice that negotiation is not that used for public service delegation. Thus, for instance, in the Netherlands, it is completely illegal that the authority negotiate with one or several candidates; it would generate complains from other candidates and drive the procedure directly to the court. Indeed, negotiation is often linked to doubtful practices and anti-competition behaviour. In some of European countries, the procedure includes tendering process but without any negotiation (closer to the Public contract procedure in France: what means very strict and detailed definition of the supply and an evaluation of the bids with pre-defined criteria).

Then why in France is negotiation used? Why, as the Sapin Act which aimed to preventing collusion and corruption and enhancing competition, did the French legislation decided to keep this *intuitu personae* principle? First of all, let's define clearly what the "intuitu personae" principle is, and then explaining why it is used for public delegate services in France and not for Public Contracts.

Public Service Delegated Contracts and Publics Contracts

The "intuitu personae" is a Latin locution which could be translated into English as "related to the person". That means those contracts are signed with an

individuals and not with corporate bodies. According to the juridical definition[7], it means that the person of the co-contracting party or his main characteristics could condition the conclusion of a contract. More simply, it means that the authority can choose the operator depending of its own feelings. The authorities do not have to select the bidders according to objective predefined criteria. Characteristics used as intuitu personae criteria could be the capital, its repartition, the belonging to a group, commercial fame, technical knowledge, strategy of the group, etc.

To understand why the *intuitu personae* is used for the Public Service delegations and not in Public contracts, it is necessary to clarify the distinction between the two cases. Indeed, even for professionals, the difference is sometimes still confusing. For example, in April 1999, a management contract has been classified as a Public contract, instead of a Public Service delegation, by a judgement in the commune of Guilherand-Granges for as much the payment wasn't related to any risk. Then, the Murcef Law[8] from December 2001 tried to clarify the distinction: the Public Service Delegation is the contracts where a person of public law entrust a private or public operator to manage a public service **in which the payment is directly related to the service exploitation's results**. But still, the definition remains uncertain.

Actually, by opposition to the Public Contracts, there are two points that can define the public service contracts:

- It is a contracts of goals and not a contracts of means (the mission is often complex and the means are very difficult to describe in a contract).
- The payment must be linked to the users (commercial revenues). The operator must then carry a commercial risk

According to Mr Marty[9] (lawyer working for Veolia), in the French legislator opinion, the first point, the fact that the mission is complex, justifies the recourse to the intuitu personae. In fact, the Public Service is not a punctual mission but the realisation of a public service on a long duration, which requires a relationship of trust between the authority and the operator. Still according to Mr Marty, in the French opinion, the assessment of the best bid is complex and can not be made only by taking into account quantifiable criteria. The Authority needs to share with the operator the same vision of public transport, needs to be able to discuss to adapt the complex network and needs to have confidence in its operator.

[7] Dictionnaire juridique et contractuel des affaires et projets, www.lawperationnel.com/Dictionnaire_Juridique
[8] http://www.legifrance.gouv.fr
[9] Opinion gathered from an interview in Paris in July 2007 with Mr Marty at the office of Veolia Transport

Impacts

The negotiation allows the authority to spend more time discussing the design of the network and its characteristics with the operator. It has also the advantage of reducing the opportunistic behaviours of some operators (like suggesting a very low price to win the contract and then increase the price by using amendments). Indeed, in Public Contracts, once the bidder is selected, it can be less expensive for the authority to increase the predefined cost than start a new tendering process; but in the case of negotiation, if the operator has an opportunistic behaviour, it decreases its chance to win the next tendering. It gives also big power to the authority for as much it can choose the company almost without justification. It gives the Operator the possibility to suggest alternatives scenarii to what was suggested by the call for tender, which is a kind of tactical freedom. In more, the risk of doubtful process is very low since the authorities legally have to be able to justify their choice before unsuccessful bidders and their decision is controlled at the regional level (Yvrande-Billon, 2005).

But at the other side, the intuitu personae contracts have a very bad impact on the innovative capacity of the operator during the contract. Indeed, even if the operator is in his own right, it would not ask for amendment (which is necessary to modify the very specified French contracts), what would give to the authority a bad image and would decrease its chance to win the tendering at the next procedure. This creates an unbalanced relationship – in practice, only the OA can modify things – that could harm service quality.

I- 2. Financing the public transport; the 'Versement Transport'

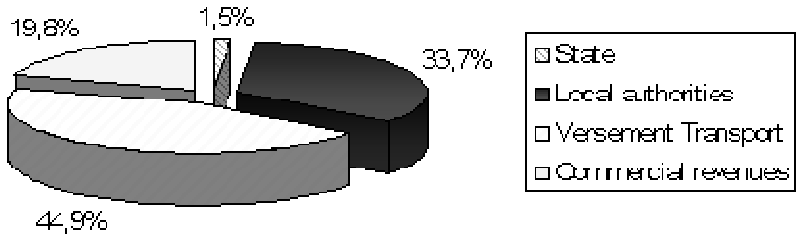
In France, there is a strong focus on public value. Indeed, the LOTI acknowledges that public transport responds to economical, social and environmental needs. Indeed, sustainable economic development requires a good mobility for people (economical aspect), Public transport is essential for people who do not have access to individual means of transport (social aspect) and it is an instrument to reduce the negative external impacts of individual car using as pollution, noise, urban and territorial planning, health and safety (environmental aspect). Thereby, the user is not the only beneficiary of the setting up of a good public transport network; "it is then not possible to consider that passengers could finance alone this service"[10]. In more, prices are maintained at a low level in order to ensure affordable access to all users (plus specific discount for some social categories). That also explains why the public transport is never financially equilibrated in French networks. The revenues from

[10] CERTU, 2003, Urban public transport in France

tickets sales cover on average less than a third of the cost if we don't take into account the investments, and only around 20% otherwise (operating + investments)[11].

So, who finances Public Transport? There are of course some subsidies, from the state (less and less) and from the local authorities. The state, in accordance to the decentralization principle, wants to have less and less responsibility in local public transport; thus, in 2005, its financial intervention covered only 1.55 % of the expenses[12]. At the opposite, the local authorities participate more and more, and paid 33.75 % of all the expenses the same year. Those subsidies concerned mainly the investment part of the expenses.

Figure 6: Financing the public transport in France, 2005 (data from the GART)



In order to meet the requirements of the urban public transport financing, a tax has been defined in 1971 in the region of Paris. This tax can now be applied by the local authority in the agglomerations of more than 10 000 inhabitants. Known as the 'transport tax' (Versement Transport or VT), the tax is paid by the employers from companies of more than 9 workers located inside the Urban Transport Area. This tax can finance both the operating costs and the investments, and covered for the year 2005 almost 45 % of all the expenses. The private companies take an indirect advantage of a public transport network that gives them access to a large employment market and contribute a lot in the rush-hour; in the French framework, it justifies the use of such a tax. This tax is the most important source of subsidies for the public transport in France, and is a specificity of the French framework.

The increase of the companies' contribution had, until now, allowed facing the increase of the Public Transport costs in France. But it seems difficult to continue to increase the 'Transport Tax' which already finance almost half of the costs[13]. In more,

[11] The data are taken from '*L'année 2005 des Transports Urbains, GART*'
[12] GART 2005, L'année 2005 des Transports Urbains
[13] Les transports publics urbains, rapport au président de la république, Cour des comptes, 2005 (p.156)

the help from the State is decreasing every year. Local authorities must now find a way to manage this lack of financing. Ideas like the urban toll had shown their efficiency, but are not yet possible in the French legal framework. The 'Cour des Comptes', 2005, also suggest an increase of the users participation and a stronger struggle against fraud.

In most of the cases in Europe, the exploitation of the public transport service is also not profitable, and there is then a necessity of subsidies from the authorities. The financing organisation is different in each country, but one common feature is that the local authorities participate (more or less) to the financing thanks to local taxes. The 'Transport Tax' is very French, but some other interesting way of taxing can also be interesting like the urban toll in London (also used a lot in Norway (Oslo, Bergen and Trondheim) or Sweden). There are also subsidies from the state, that could come from taxes like the one on the oil and the revenues from parking and speed fines can also be used for the public transport.

I- 3. Area based contract

Most of the French Organizing Authorities tender a whole network to a single operator. But actually, they are free to decide how to organise and contract out the public transport services. Whereas more and more large cities in Europe (London, Stockholm, Helsinki, ...) have more than one single operator on their networks, very few cities in France resort to the allotment. That brings us to the question of the interest and the impacts of an allotment.

As described by Yvrande (2005), one important problem in the French context is that, even if there is an obligation of using a tendering procedure, no concurrence is really effective. One part of the explanation is that more than 75% of the networks are operated by the 3 main operators (which had some kind of agreement in order to keep prices at a quite high level, as shown by the French Competition Commission (Conseil de la Concurrence in 2005[14]), and the smaller operators are not strong enough to get a full network. Thus, if we make several lots in one network, more competition could be possible. The example in London shows that the allotment practice can increase the number of bidders and then reduce the operating cost[15].

[14] Conseil de la concurrence : 19ième rapport annuel, 2005.
[15] Compte rendu du séminaire CRIA du 04.05.07, intervention d'Anne Yvrande-Billon, Université Paris 1, ATOM.

On the other side, an allotment would multiply the number of procedure and then increase the transaction costs. It will also reduce the market power. Another problem is that monopoly allow some profits from economies of scale, and, in the case of allotment, because of the lack of knowledge of some Organizing Authorities and the need for a completely different organisation, it could be even more difficult to coordinate the different parts of the network.

In France, the networks divided already exists: The inter-urban bus lines are often delegated to several operators. The Île-de-France network is also divided and exploited by RATP, SNCF and Optile. Perpignan urban network is operated by two companies (Spanish companies), but it is not that common.

I- 4. Rolling stock and staff

The Organizing Authorities, in most of the case, have the property of the rolling stock, and make it available for the Operator. According to the Cour des Comptes, 2005, it allows to clarify the role of each part of the cocontracters.

According to Faivre d'Arcier, the first reason can be historical; until the 70s, cities were under the State guardianship, and could not loan on financial markets. But in the 80s, the operators could not balance their activity, and the rolling stock turn old and were not renewed. The state initiated contracts for Collective Transport Development in order to finance the renewal of the rolling stock. Still according to Faivre d'Arcier, there is also a financial reason for this system. The OA can keep the VAT taxes on the investments (it is then less expensive), plus, the OA can buy rolling stock with very low loan rate since the signature is from the Trésor Public, which can be the best guarantee for the banks.

The main reason is thus concerning the quality control. But nowadays, another reason is the fact that it generates less dependency between the two stakeholders; the less the operator invests in physical assets, the less dependency there is. French contracts also stipulate that in the case of an Operator change, employees from the previous operator become employees of the new one on the same conditions. According to Yvrande-Billon, 2005, these specificities are made in order to reduce the incumbents' advantage at the contract renewal.

In other places in Europe, we can see different practices. The private companies can have the property of the rolling stock, and in the case of a network loss, they can sell the rolling stock or use it in some other network. Some companies use to

leasing companies; it is a form of investment and financing. The leasing company owns the rolling stock and rents it to the company that won the market. Leasing gives the operators a flexibility in the investment that allows to respond dynamically to market opportunities without the matter of long-term investment considerations.

The French practices present very interesting specificities that make the French case so particular. First of all, the negotiation is still used during the procurement and the last choice of the OA is only depending on the intuitu personae. Some others specificities are interesting as well, such as the way of financing the public transport, the contracting of a whole network to a single operator and the property of the rolling stock. But all of these specificities have strong justifications.

In this original framework, I will now focus on the tactical level, expecting very little freedom for the operators. I will also try to analyse the reason of the allocation of the tactical responsibilities.

II- The paradox of the French contracts: responsibility of the tactical level

In order to have a clear overview of the allocation of the planning levels, the Figure 7 presents a classification adapted from the classification used by van de Velde, 1999

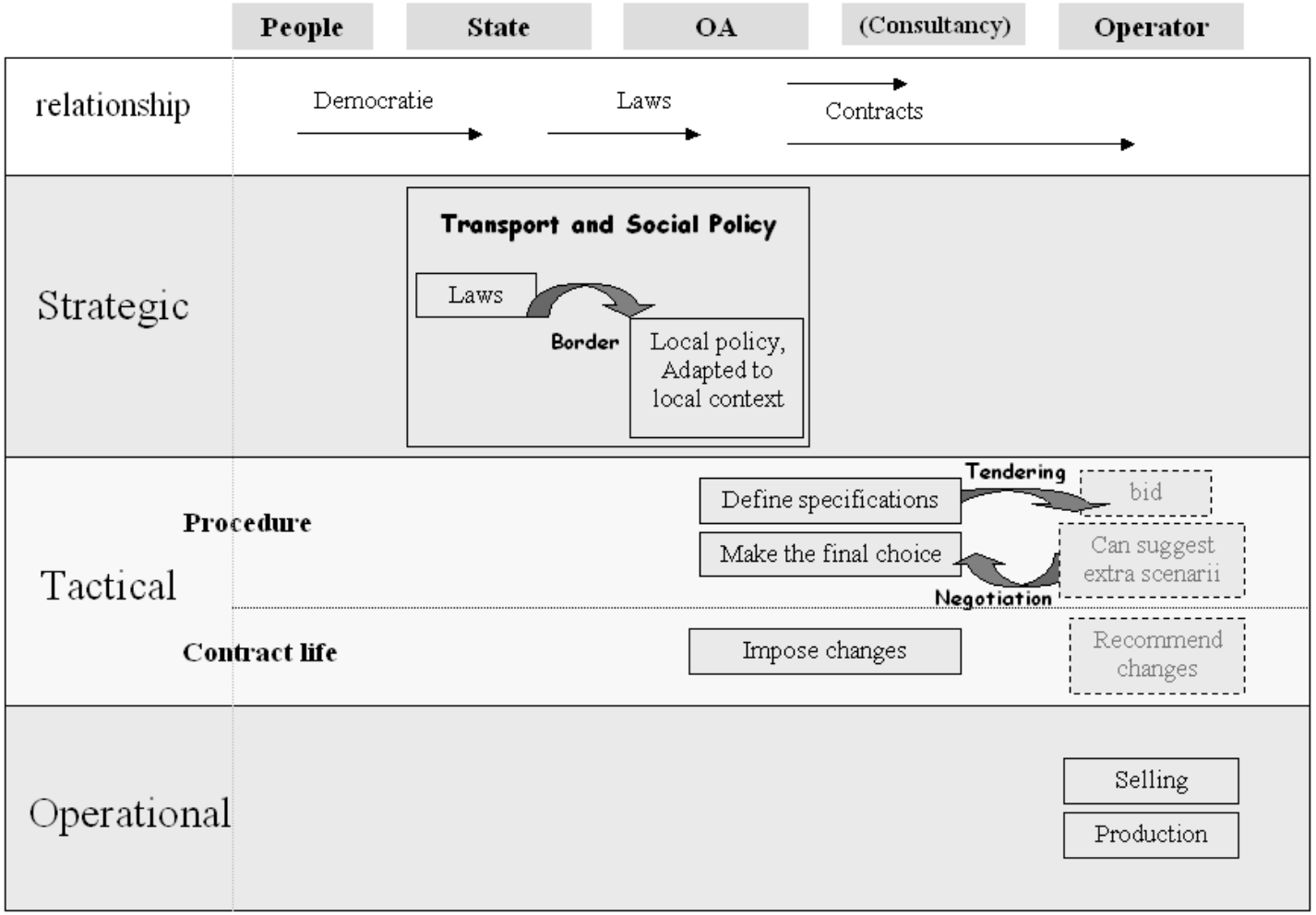
II- 1. Contracts more and more risky

The context of the contract practices has evolved very quickly during the last 25 years. Indeed, 25 years ago, before the LOTI law, the management of the public transport was made by familial companies. There was at that time very little regulation. Then, in 1982, the Domestic Law, so-called LOTI, clarified the relationship between the transport operators and the authorities (The LOTI law gave the responsibility of the urban transport to local authorities) by making compulsory the use of a contract. In 1993, The Sapin Act imposed the use of tendering in the contract procedure. And, according to Pierre Marty[16], since the end of the 90s, the contracts are getting more and more complex and detailed. Nowadays, the urban public transport contracts are the most elaborated in the Public Service Sector.

In the management practices, we have witnessed shifts from 'Régie' to delegate service. The goal was then to transfer the social risk[17] to a private company and to stabilize the authorities' budgets. Indeed, by delegating the responsibility of the urban public transport service operation, the state transferred also the risks related to the management of the workers (drivers): every hazard that could reduce the working capacity of a worker (such as disease, accidents, invalidity, oldness) or increase his expenses (such as shaping a family). And still now, more and more risk is given to the operator. As explained by A. Yvrande-Billon, 2005, during the period 1995 – 2002, "out of the 123 auctions that were organized, 38 % have translated into contractual changes and a vast majority of these changes are switches to more high-powered incentive contracts"[18].

[16] see above
[17] According to JM Ferraris, directeur general adjoint of Kéolis, in an interview in July 2007, in Paris.
[18] A. Yvrande-Billon, 2005, *The Attribution of delegation contracts in the French urban public transport sector : why is competitive tendering a myth ?* paper presented at the 9th thredbo conference at Lisbon in 2005.

Figure 7: planning levels in the French Framework



II- 2. Tactical freedom in Europe

This shift towards more responsibilisation of the operator happened in some other European members as well; this shift is usually made in order to obtain more efficiency, and justify it also by saying that the operator is logically more able to understand the needs of the market (day to day contact with the population). The operator has also obtained more freedom to design the network and the characteristics of the services (tactical level).

During the procedure

In the Netherlands, the Dutch reform (Passenger Transport Act 2000) goal was to enhance quality improvement by giving more freedom to the operator and define more clearly the public transport goals by the authorities. This example is especially interesting concerning the freedom that can be given during the contract procedure. Indeed, the Dutch provinces have little taxation power and the government gives the local authorities an amount that could only be spent on public transport. Thus, the tendering is oriented in a purpose of maximizing supply and quality for the existing budget instead of minimizing costs for the level of services requested[19].

The new legislation gave the authority the freedom to choose their organisational form. Then, different practices can be seen: some authorities decided to specify the whole network giving no design freedom to the operators whereas some others authorities give substantial freedom (see van de Velde and Pruijmboom, 2005; van de Velde, Veeneman and Lutje Schipholt, 2006). One very illustrative case was the example of Amersfoort, which is one of the rare cases where substantial freedom has been given to the operator during the tendering and some freedom during the contract period. The operators had to design a new network as part of the tendering, but there were also some basic requirements as, for instance, "95% of the houses in the municipality had to be at a walking distance of a maximum of 400 metres to a bus stop".

The contract is on a net basis. The operator bears all revenue risks and a financial incentive is added. A bonus of 150% above any additional passenger revenue compared to the pre-tendering situation is sometimes given to the operator. A malus is

[19] Competitive tendering in the Netherlands : central panning or functional specifications ? by Didier van de Velde, Lars Lutje Schipolt and Wijnand Veeneman, 2007, paper presented at the 10th Thredbo conference in Australia.

also defined in the same way, as a penalty in case of a decline in readership. As a result, the network as changed a lot and the municipality is pleased[20].

During the contract life

The Performance-Based Contracts (PBC) from Norway present a very interesting case of freedom given to the operators at the tactical level during the contract life, with strong incentives. The contract started from the premise that the operator usually has the best knowledge of the market and should be left to design the most appropriate route system. In more a key point is a need for a balance between responsibility and risk; the actor responsible for revenue generation must also have the planning responsibility.

The Operator can be free to design the network as it likes, but there are some requirements from the authority which defines a framework for the minimum quality of service with regard to fares and accessibility. This also involves customer satisfaction surveys, and if customer satisfaction falls below 90 % of the target level, the authority can cancel the contract and select another operator (or tender the contract).

But, according to Norheim and Longva[21], as shown by the first Dutch experiences where few changes have been made, design freedom at the tendering level does not seem to be sufficient to generate networks improvement. In fact, although the Dutch experiences were innovating and promising, very few dynamic developments have been seen. Actually, according to Bård Norheim and Frode Longva, 2005, the operators bore all the risks, but no real potential earning was associated. Then, additional financial incentives must be given: The Performance – Based Contracts in Norway have a very innovating payment scheme that 'pays for results rather than shares the cost of inputs' (Carlquist 2001)[22].

This incentive contract form seeks to internalise those externals effects into the operator's commercial decision criteria within an operator remuneration framework that is related to the level of service and to passenger numbers. A main feature of the contract is the fact that incentives paid per bus-kilometres and per bus-capacity

[20] First experiences of tendering at the tactical level (service design) in Dutch public transport, van de Velde and Erik Pruijmboom, Transport Economics, Erasmus University Rotterdam (The Netherlands) 2005

[21] Quality tendering and contracting service design; comparing the Dutch and Norwegian initiatives, by Bård Norheim and Frode Longva, 2005, paper presented in the 9th Thredbo conference in Lisbon

[22] Carlquist, 2001, Incentive contracts in the Norwegian public transport : the Hordaland model, paper presented at the 7th THREDBO international conference on competition and ownership in land passenger transport, Molde, Norway

internalise existing passenger benefit from increased service frequency and reduced crowding. The passenger incentives help to internalise the external costs of car use during rush ours and is also a pay for result.

II- 3. A smaller breathing space in France

Thus, in European countries where more responsibilities have been given to the delegate, like in the Netherlands or Norway, the tactical freedom has also been shifted. Some extra incentives are also added in order to stimulate the use of this freedom and innovative practices. In France, this balance between risk bearing and freedom at the tactical level does not exist.

During the procedure

We have already described the procedure and the different steps in the Sapin Act procedure. What is interesting in it is that it combines tendering and negotiation. The idea was to negotiate after having received some bids that could give a base of comparison concerning the price.

Jean Michel Ferraris[23] explained us that the tendency is a more and more closed and detailed specification, More and more demand for extra network design scenarios is also observed. The bidders must answer carefully to the specifications but are now also invited to suggest some improvement or innovation. Then they have a kind of freedom since they are a force of proposals. But still, the last choice is the responsibility of the Organizing Authority.

During the contract life

During the life of the contract, there is almost no freedom at all for the Delegate. The contracts are very complex and detailed in France, and every thing is defined. Even the service, route by route, can be precisely detailed. And every significant change needs an amendment. But for practical purposes, amendments are used unilaterally by the authorities.

Indeed, the request for amendment by the Operator generate a bad impression to the authority. And, according to the assistant director of Keolis, since the *intuitu personae* principle is very strong in the French procedure, operators prefer to stay in

[23] See above

good terms with their authority. Then the contract is not devised to be changed by the Delegate; only the authorities can redefine the service (but there is financial compensation for each change).

Conclusion

There is then a big paradox in the French management of the urban public transport; more and more risk is given with less and less freedom at the tactical level during the contract life. It is indeed a paradox since the justification of the shift of the risks from the local authorities towards the operators is the fact they have a better view of the market need, and they give less and less breathing space during the life contract to adapt the network to the change of the demand.

Nevertheless, a trend towards more freedom during the procedure is observed by the operators for as much they are asked to suggest extra scenarios in the tendering and the negotiation process.

The analyse of the allocation of the tactical responsibilities showed up a paradox: on the contrary of what can be done in others European countries, there is no link between bearing more responsibilities and having more freedom. In France, the operator is carrying more and more risks, but it has less and less breathing space during the contract life.

I would like know to focus on the reason of such a distribution, and try to see how strong are the barriers to change what look like an incoherence.

III- Analysis of the tactical barriers

One can notice here that, as most European countries, France tends towards giving more and more risk to the urban public transport operators, notably to stimulate them to better performances. However, in contrary to the Netherlands and Norway, the transport authorities decided to keep the responsibility of the network's definition and its characteristics. The paper will try to explain here why such a paradox: more and more risks with less and less tactical freedom, and define what are the barriers that interfere with giving tactical freedom to the operator.

In this purpose, by analogy with the work made by van de Velde, Veeneman and Schipholt for the Netherlands (Service design in competitive tendering in the Netherlands, Shifts between authorities and operators), I attempt in this part to analyse the reasons of this specific situation with the classification of Williamson[24] which takes into account four levels:

- Customs and traditions
- Legal and regulatory Regime
- Governance
- Contracts.

Each level has a controlling influence on the level below it (with also some feedback effects to higher levels). Each level evolves with different frequency. The first level, originally called "Embeddedness" deals with all the customs and traditions, the norms and the religion. The second level is the "institutional environment", which deals with the legal and regulatory, the "rules of the games" defined at the political level. The third level is "governance" and deals with the modes of organisations. The last level is about prices and quantities ("resource allocation and employment"). The distinctions between each model deals also with the frequency of change. The last level evolve continuously, and a frequency of 10^0 is define (the changes are continuous).

Then the "governance" level changes with a frequency of 10^1, the "institutional environment" changes every 10^2 years, and the first level every 10^3 years.

[24] Williamson, O.E. (2000). The New Institutional Economics: Taking Stock, Looking Ahead, *Journal of Economic Literature,* 38**,** 595–613.

III- 1. Customs and traditions

The state keeps a large responsibility in defining and organizing the society. Indeed, even if it participates less and less in the financing, it still defines the regulatory and legal framework in which the Public Transport takes place. The French state is traditionally a centralist state. However the Public Transport has an important impact on economic, environmental and social aspects, and the French tradition give a strong meaning of the Public Values. That explains why the State still define the general framework

Since the LOTI law, the state gives more and more responsibilities to the local authorities.

III- 2. Legal and regulatory framework

- Refers to the Organisational forms presented in the first part and taken from van de Velde, 1999, the French framework is under the Authority regime; that means the production or market entry is the result of a decision of the authorities only.

  The French organisation was first under the market initiative with the décret of 1949 (still in application for the Île-de-France). In 1960, this décret has been modified in May, the 20th, defining the Urban Transport Areas, shifting some freedom to design the network from the Departments to communes. The goal was then to create coherent networks (instead of only the historical inter-regional lines) and also to allow authorities to give financial compensation to the operators that could not manage to balance their activity anymore (because of the increase of the car use and the urban development induced by rural depopulation. The Loi des Transports Publics d'Intérêt local (TPUL – 19/6/1979, Public Transport Law of local interest) introduced the « Organizing Authority » notion and organised the contracts[25].

- As presented earlier, since the Domestic law (LOTI), the Organizing Authorities have the responsibility of public transport. The organisation and management of the public transport networks are ensured by the local authorities which are also the Organizing Authorities. In this regulatory framework, the OA can choose the way of managing the Public Transport Service. According to Pierre Marty, after a period of familial management of the networks, the state decided there was a need to clarify the relationships

[25] Bruno Faivre d'Arcier, Laboratoire d'économie des transports, ISH

between authorities and operators. It introduced then the contracts. It was also the opportunity to go ahead in the decentralization in order to have better (local) management on the public transport. In particular, the AO is responsible for the definition of the urban transport characteristics (relations to be served, frequency, timetables, rolling stock, fare system, mode of operating, choice of operator, etc.) which represent, actually, the tactical level. Nevertheless, the OA has the responsibility of the public transport service; and if it can delegate it, it can not renounce to the responsibility of organizing the services[26]. The operators can then suggest modifications, but the decision is the responsibility of the OA. This legal framework is a strong barrier since the legal framework does not allow shifting the decision power to the operators.

- According to Pierre Marty, the transport competency is shared at different levels: Local authorities, Regions and Departments. This interweaving can generate some difficulties to organise the public service. This is related to the organisation of the country which is divided in Regions and departments. Plus, the difference between urban and inter-urban is becoming more and more difficult to make. That also can generate some conflicts between authorities that could have the responsibility for a same territory. Thus, the different political stakeholders have to discuss the organisation of the services, what makes things even more difficult for the operator to give its opinion.

- Still according to Mr Marty, the government realised the lateness of the regulation about procedure of the contract procurement in the public transport service. Thus, in 1993, the Sapin Act clarifies the procedure in making the use of tendering compulsory. Taking into account the lack of knowledge of some authorities, this Act introduce a tender in the procedure in order to help the authorities to compare the offers. This is not a barrier at all to shift the tactical level towards operators. Indeed, in the countries where operators have some tactical freedom, the tendering is compulsory; freedom can still be given during the procedure and during the life of the contract.

- The Sapin Act keeps the use of the negotiation in the procedure. It allows a discussion between the two actors of the public transport, and then allows the setting up of a common vision of the Public Transport Service. In this step of the procedure, the operator can present its vision and argue. It is then a factor of freedom for the operator at the tactical level during the procedure.

[26] Explained in the C.G.C.T. (Code Général des Collectivités Territorial), www.legifrance.fr

- We can notice the so-called Chevènement law, which gave financial incentives to the communes to incite them to unit (taxes incentives like a minimum number of inhabitants to allow putting the 'Transport Tax'). According to Baumstark – Roy – Ménard – Yvrande Billon[27], if we can imagine this aggregation would increase the transport competency, it could also bring to a lose of control (disaffection of the sources of information). And in the case of a lack of competency, the OA won't trust the company (because it could not control it and would not give it any freedom).

III- 3. Governance

- The regulatory and legal framework gives all the decision power to the Authorities. The justification of this power allocation is related to the previous point: importance of the Public Value and the public transport is traditionally the responsibility of the state (because of all its impacts on the economic, social and environmental dimension). According to Mr Ferraris, one other reason could be the fact that the Organizing Authorities participate a lot in the financing (thanks to the Versement Transport), and thus have the right to control what is done. What can also be a (unconfessed) reason why the OA keeps the tactical power is the fact they do not trust the private companies (opportunistic behaviour of the companies that only look for profits, see Baumstark – Roy – Ménard – Yvrande Billon for example). At last, one must keep in mind that the Public Transport can be a very important political issue, and the OA (which are directed by politicians) want to keep the control.

- But we have to shade the previous point in saying that the Delegate has a very specific role in France. The Operator has a day to day contact with the passengers, and the Public Transport service has a huge impact on the society (the users organise all their activities in relation to the public transport, and any problem in the service provision can perturb considerably the users program). Thus the operator involves in the society life and is in permanent contact with the public transport users. The delegates are then asked to advise the authorities. And even if they have no real decision power, most of the time, their advices are followed (partly because operators have more competencies than the authorities). Actually, it is even written in some of the French contract that delegates must regularly give suggestions to improve the networks (every year for the contract of Lyon, for example). This can be seen as a kind of

[27] Modes de gestion et efficience des opérateurs dans le secteur des transports urbains de personnes, mai 2005, LET – ATOM.

tactical freedom. The authority still can refuse the changes, or even impose their own change, but there is then financial compensation for the operator: the lack of freedom is paid. Thus, we can say that, if they have almost no tactical freedom during the life of the contract, the operators are still a real '*force of proposal*' even during the contract period.

III- 4. Contracts

- The contracts are mostly Area-Based in France; that means one company operates a whole network. The first advantage of such an operating is about the management. The more stakeholders there is, the more complicated the discussion can be. The allotment would multiply the number of procedure and then increase the transaction costs, compare to monopoly which allow some profits from economies of scale. This organisation is not a barrier at all. Indeed, compare to the networks where there is allotment, it should be even easier to give tactical power to the operator for as much as the network is one and global policy is possible (considering the lack of knowledge of some authorities, it could be difficult to coordinate all the network in a case of allotment).

- In most of the French contract, the infrastructure, equipment and rolling stock is the property of the authority, which makes them available to the operator. In the French point of view, it is thus easier to change the operators. Indeed, it clarifies the respective roles of the OA and the operator. It is especially justified in the case of specific rolling stock (The OA has the responsibility of the rolling stock, and some material can be adapted to a specific infrastructure). It can reduce the OA dependency to the operator and then reduce the incumbents' advantage at contract renewal. In my own opinion, this French physical assets management has no impact on the tactical level. It constitutes a plus in the competition framework, that's all.

In the following description summarized the previous comment. I present the remarks, and try to explain why it is that way in France. Then I try to analyse if it is in support of the tactical freedom or if it is a barrier.

	Specificities	Justification	Is it a barrier to freedom?	
			YES	NO
1 Customs, Traditions	• The State keeps a large responsibility in defining and organizing the society.	• In France, the State is traditionally centralist. It defines how things must go on. It is especially the case for specifics subjects like the Public Transport because of the strong meaning of the Public Value in France and the important impacts on the society.		X • It is not that much a barrier as the State defines only the general framework in which the public transport should evolve. For example, it defines the legal and regulatory framework.
2 Legal and regulatory regimes	• The French framework is under the Authority Regime. It means the production or market entry is the result of the decision of the authorities only.	• The framework was under the market initiative since the decret in 1949, but, in order to allow the communes to give financial compensation to the operators, the state decided to give to the communes some responsibilities and freedom in 1960.	X	• This shift towards an authority initiative regime defines a new framework in which the operator can not organise the lines as it wants.
	• **LOTI**: Since the Domestic Law, the OA has the responsibility of public transport. As a consequence, the OA can define precisely the services. It can delegate the service but not renounce to the responsibility.	• After a period of familial management of the networks, the State decided there was a need to clarify the relationships between authorities and operators. It introduced then the contracts. • It was also the opportunity to go ahead in the decentralization in order to have a better (local) management on the public transport.	X	• ***The LOTI precise the roles of the Organizing Authorities, which can delegate the service of public transport, but not renounce to the responsibility. The Operators can not bear the responsibility of defining the service and its characteristics.***

	• The transport competency is shared at different levels (local authorities, Regions, Departments):it can make it difficult to manage • The difference between urban and inter-urban is becoming more and more difficult. The Urban Transport Area is extending continually. That can generate some conflicts between authorities that could have the responsibility for a same territory.		X • In one way, this unclear situation can be a barrier. Indeed, each part wants to have its one's say. It is then even more difficult for the operator to give its opinion • That can generate some conflicts between the different stakeholders. In this sense, it is a barrier to the good management of the network...	
	• **Sapin Act**: make the use of tendering compulsory	• The government realise the lateness of the reglementation about the procedure of the contracts procurement (compare to other Public Services for example). • Before the Sapin Act, no tendering was compulsory. This Act introduces a tender in the procedure in order to help the authorities to compare the offers.	X • In the countries where operators have some tactical freedom, the tendering is compulsory. Freedom can still be given during the procedure and during the life of the contract.	
	• The Sapin Act keeps the use of negotiation	• The negotiation allows a discussion between the two actors, and then allows the setting up of a common vision of the Public Transport Service.	X • In this step of the procedure, the operator can present its vision and argue. It is then a factor of freedom for the operator at the tactical level during the procedure.	
	• The so-called Chevènement law gave financial incentives to the communes to aggregate.	• In order to incite to a global policy, and increase the transport competency of the OA.	X • It can also reduce OA's control by getting further from the field, generate lost of competency and entrust.	

3 governance	• Only the Organizing Authority has the decision power.	• It is related to the previous point (Importance of the Public Value and public transport is traditionally the responsibility of authorities (state and then local ones), no trust in the behaviour of the privates companies that only look for benefits) but it is also strongly related to the fact that the government (by the local authorities or the state) participate a lot in the financing of the Public Transport. • One important point is also the fact that Public transport can be a very important polical issue. That could explain too why the authorities keep the responsibility.	X
	• Operators as a 'force of proposal'. They are asked to suggest improvement in the network.	• The delegates have a day to day contact with the users, and can then give some feedback of the service. In more, the companies are, of course, often more specialized than the authorities.	X • This represents a kind of tactical freedom during the contract life. • In more, there are some financial compensations for the operators if there suggestion are refused or if the authorities make a unilaterally change.
4 Contracts	• The contracts are Area Based. Most of the time, one company operates a whole network.	• Better integration (transport policy, tickets and prices, …), economies of scale	X • It should be easier to give tactical freedom for as much as the network is one and a global policy is possible.
	• The rolling stock is the property of the authorities (in most of the case).	• That reduces the dependency between the Operator and the OA.	X • No impact

III- 5. A possible evolution?

Could it change?

The previous table show that most of the barriers I noticed to the shift toward more tactical freedom to the operator are at the 'legal and regulatory framework' level. Indeed, the lack of tactical freedom (at the contract level) is the consequence of the higher levels. The most significant barrier seems to be the LOTI law, which give all the decision power to the Organizing Authorities. But this French organisation is based on customs, historic and traditional behaviours and ways of thinking. As the Path Dependency theory (Path dependency is the view that technological change in a society depends quantitatively and/or qualitatively on its own past) says it seems then difficult to shift toward a completely different scheme where the delegate manage itself all the tactical level. The trend is more towards more tactical freedom (especially during the contract procedure) but still with a strong presence of the local authorities that decide (approve or not the suggestions made by the operators).

Do they want it to change?

According to Mr Ferraris, the operator would like to have more breathing space during the contract life, but actually, the contracts are not that risky for the operators and the return on investments is almost infinity for as much the operator does not invest a lot in the physical assets. The French contracts appear to be quite comfortable for the operators (limited profits but also very limited risks).

Indeed, according to the Cour des Comptes, 2005, in most of the networks, contracting owning and assets property is on the authority side, which means that the authority bears all the risks linked to the investments. Plus, usually, the operators have few implication in the commercial risk (dealing with revenues and ridership) insofar as, whatever the kind of contract in France, the authority gives financial compensations (In more, the ridership is a quite stable data). In any case, still according to the report by the Cour des Comptes, there are often stipulations that protect the operator in the case of a decrease that can not be attributed to the Operators' work.

They have more responsibility on the industrial risk. The trend is now to better allocate the industrial and revenue risks (with some profit-sharing or penalties

concerning the expenses and the revenues or concerning qualitative criteria). The Cour des Comptes precises that despite this positive intention, very few improvement can be made if the contract clauses are not well made; amendments can reduce the initial incentives, indicators not up dated, profit-sharing limiting the risk for the operator (the profit-sharing rules in most of French contracts are based on "tunnels"; for example, between –2% and +2%, every variation is taken on by the OA, then between –5% and –2%, and between 2% and 5%, the profits or loss are shared, and then, there is a renegotiation), etc.

Indeed, the contracts are not that risky, but, according to Faivre d'Arcier, we must notice that the benefits are bound as well. The OA does not want the operator to earn too much whereas the OA is covering the deficit.

The authorities must continue to develop their competency in Urban Public Transport to be able to control better what is done by the operators and responsibilize them more, and then reach better performances. But the authorities may not want to give this responsibility to their delegates otherwise they would lose the control of a very important tool for the politics. Indeed, the public transport deals with daily issues and with long term planning, and is easy to show to the voters. It concerns lot of citizens, and its three dimensions (social, economical and environmental aspects) can be very efficient for vote-catching purpose.

Following the work of van de Velde for the Netherlands, I studied the barriers to change towards more liberty for the operators by a classification inspirited from Williamson. It appears that most of the strong barriers are at the regulatory and legal framework and have historical origins.

It seems unlikely that the trend will turn to better adequation between risks borne and freedom, partly because both of the stakeholders find their advantages in this situation.

CONCLUSION

In the framework of a European contract practices evolution in the urban public transport, we have noticed that the French case presents interesting particularities. The most important one is the very strong implication of the public authorities in public values, especially in the urban public transport, which the contracts and the allocation of the responsibilities can show up. We must also notice the large panel of the contracts used in France.

The public transport has economical, social and environmental issues that justify the public authorities' intervention at the transport policy level and the financial aspect as well. However, the last two decades have witnessed a shift of the risks from the authorities towards the operators, and instead of shifting as well some tactical freedom like in some others European State members, the French authorities keep the responsibility of the definition of the service and its characteristics.

This inadequation between risks borne by the delegates and their tactical freedom is the consequence of a regulatory and legal framework inherited from a centralist state history which gives all the power to Urban Transport Organizing Authorities. The barriers that hold up a rebalancement of the roles are strong but not impossible to cross, provided that one wants to cross it. Indeed, it is possible that both the authorities (keeping a very strong political tool) and the operators (benefitting from contracts with little risk) are pleased with the situation. And in fact, it seems to work.

The evolution we can expect will not give more freedom to the operators during the contract life. The trend is more to give larger freedom during the contract procurement in order to promote a better discussion between the two stakeholders, thanks to the negotiation. But we must moderate this point by underlining the advising role of the operators during the contract life; the operators are deeply involved in the network design process.

However, we can hope the authorities will continue to develop their competencies, and thus, would be more able to control the operators' work. In this case, maybe, the authorities would give more liberty to its operator.

It would be interesting to compare the practices, in terms of economical efficiency at least, with what can be done abroad. Indeed, if the authorities and the delegates seem to be pleased with this situation, the French public transport may be too expensive compare to the service provided, and the citizens (public transport users but also tax payers) and the companies (paying the Transport Tax) may be complaining. This is for me the limit of this paper: not be able to conclude on the functioning of the French system compared to other member states. But this is the topic of the general study for which this paper has been made.

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J.M. Ferraris, deputy director of KEOLIS, July 2007, Paris.

P. Marty, lawyer at VEOLIA Transport, July 2007, Paris.

M. Amaral, researcher at ATOM and … at VEOLIA Transport.

B. Faivre d'Arcier, teacher – researcher, Laboratoire d'Economie des Transports, ISH, Lyon (mail contact).

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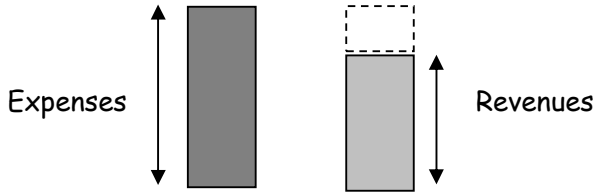
Appendix

Appendix I

Innovative financial schemes in the contracts

Figure A: revenues are less than expenses in public transport



The expenses are usually more important than the revenues. Then, the operator often needs some compensation from the OA, as a payment for Public Service Obligations for instance. The basic difference between net cost contracts and gross cost contracts is that in gross cost contract, the OA gives to the operator a reimbursement for the expenses (and the operator cashes the revenues), and in the net cost contracts, the OA gives compensation for the net difference between Expenses and Revenues.

Some recent and innovative practices have been made in different places as the Dutch experiments or the Performance-Based contracts (PBC) from Norway. Theses practices will be now quickly presented, in order to present what can be done in such a field.

1. Super-incentives in Norway

(see *Carlquist, 2001, Incentive contracts in norwegian local public transport: the hordaland model* and see *Fearnley and Bekken, Performance-Based Subsidies, 2003*).

Passengers' income alone presents no sufficient potential income for the operators in comparison to the risk involved in developing a new service provision. One way to counter to this is reducing the revenue risk for the operator by contracting a gross cost contract, which means less responsibility to the operator. One other solution would be an increasing income potential by adding further passenger

incentives to the ticket revenue. In other words, in addition to the revenue from tickets passenger, the authority gives a subsidy by passenger-kilometre. These contracts, also called 'super incentives contract', have first been experimented in Hordaland County in 2000.

Performance-Based Contracts Principles

In Norway, the regulatory framework is under a market initiative; the "Samferdselsloven" (Transport Act) stipulates that any person or company must have an authorisation to do transport operations. These authorisations are granted by regional government. Thus, private operators have the right of initiative, but this is subject to detailed regulation

In Hordaland County, net cost contracts are traditionally used, allocating also the revenue risk to the operators, which was appropriate to the large operators in the County. The net cost contracts stimulated operators not to focus only on the operating efficiency, but also on the revenue aspects. But the performance will also depend on the level of subsidy (operators will operate the services where ticket revenue exceed marginal costs).

The contract start from the premise that the operator usually has the best knowledge of the market and should be left to design the most appropriate route system. In more a key point is a need for a balance between responsibility and risk; the actor responsible for revenue generation must also have the planning responsibility. But in this system, where the operator has the tactical responsibility, appropriate incentives need to be present to ensure a designee and operating efficiency from a social perspective. Indeed, when operators design service levels according to their business considerations, they will only operate those services where ticket revenues exceed marginal costs. In more, the operator consideration does not take into account two main elements; the benefits to existing public transport user from an improved service level and the benefits from reducing external costs, by shifting personal travellers from cars to bus, such as traffic congestion, crash risk and negative environment impacts.

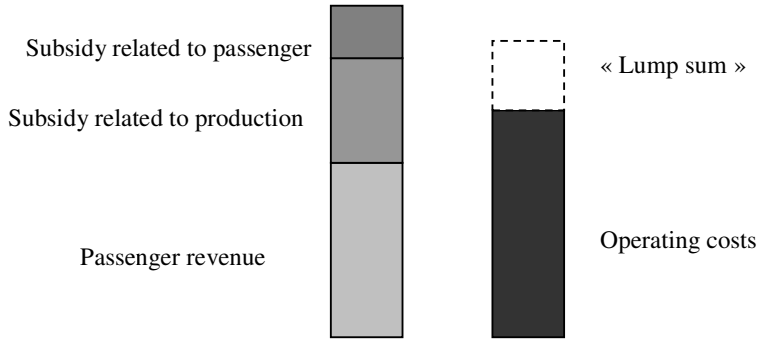
The PBC contracts main objective is to combine authority's objective (to maximise social welfare given budgetary constraints) with the companies' objectives (to maximise profit). This incentive contract form seeks to internalise those externals effects into the operator's commercial decision criteria within an operator remuneration framework that is related to the level of service and to passenger numbers.

The contracts

These contracts have a very innovating payment schemes that "pays for results rather than shares the cost of inputs" (Carlquist 2001). The contracts are done following two steps. The first one is the determination of fare levels, bus revenue-km and bus capacities, in order to maximise the social welfare function. The second step is the calculation of rates for subsidies (fare subsidies and revenue-km subsidies). There are three rates corresponding to the following criteria: bus-kilometres, bus capacity and number of passengers.

The contract is on a net cost base (the operators receive the fare revenue). A main feature of the contract is the fact that incentives paid per bus-kilometres and per bus-capacity internalise existing passenger benefit from increased service frequency and reduced crowding. The passenger incentives help to internalise the external costs of car use during rush ours and is also a pay for result.

Figure B: principle of the Performance-Based Contract



Numerical calculation done by Larsen show that the urban operator would be likely to receive a substantial level of excess profit. Accordingly, a fixed-deduction was suggested. This Fixed-deduction is called "lump sum" by Fearnley and Bekken. This Fixed deduction can be seen as a charge for the right to operate on this contract.

There are also several requirements from the authority. It defines a framework for the minimum quality of service with regard to fares and accessibility. This also involves customer satisfaction surveys, and if customer satisfaction falls below 90 % of the target level, the authority can cancel the contract and select another operator (or tender the contract).

In the case of a tender, the winner is the one who propose the best price. It could be the highest "lump sum" proposal. The criterion is as simple as in standard

tender. And if there is no potential for market development, this contract would be a net-cost contract with a higher revenue risk for the operator.

According to Bård Norheim and Frode Longva, the most important critic of this contract could be in the case of tendering. In this performance contract, the incumbent operator has a big advantage as he knows well the network and the potential of this operating.

2. Dutch experimentations

Passenger transport Act 2000

The gross cost contracts gives maximum control to authorities, and as the design is clearly define by the authority, the services are easy to compare. The overall point is an improvement of cost efficiency. But the operators have very few incentives to focus on increasing revenue and developing public transport provision beyond reducing production costs. In more, the service can not be improved during the contract period without a costly re-negotiation.

That explains one of the aims of the Dutch reform (Passenger Transport Act 2000): to enhance quality improvement by giving more freedom to the operators and define more clearly the public transport goals by the authorities, i.e. to deregulate at the tactical level and regulate at the strategic level (see Bård Norheim and Frode Longva). The new legislation has moved the organisational form from regulated market initiative to authority initiative. It gave the authorities the right to whole responsibility to provide public transport services and the obligation to use competitive tendering to choose operators.

Contracts

The Dutch municipalities have also little taxation power and the government gives the local authorities an amount that could only be spent on public transport. Thus, the tendering is oriented in a purpose of maximizing supply and quality for the existing budget instead of minimizing costs for the level of services requested.

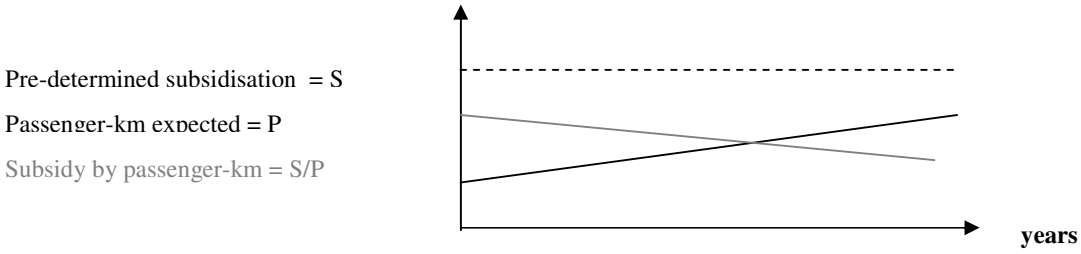
The new legislation gave the authority the freedom to choose their bidding procedures. Then, different practises can be seen: some authorities decided to specify the whole network giving no design freedom to the operators whereas some others authorities give substantial freedom. Some representatives cases of Dutch practices

have been presented in earlier papers (see van de Velde and Pruijmboom, 2005; van de Velde, Veeneman and Lutje Schipol, 2006).

One very illustrative case was the example of Amersfoort, which is one of the rare cases where substantial freedom has been given to the operator during the tendering and some freedom during the contract period. The operators had to design a new network as part of the tendering, but there were also some basic requirements as, for instance, "95% of the houses in the municipality had to be at a walking distance of a maximum of 400 metres to a bus stop". It can be notice that, during the contract period, the consumers unions have to be consulted for any change. If they disagree, the city council has to approve the change. The contract is on a net basis. The operator bears all revenue risks and a financial incentive is added. A bonus of 150% above any additional passenger revenue compared to the pre-tendering situation is given to the operator. A malus is also defined in the same way, as a penalty in case of a decline in readership. Four bids have been placed and Connexxion won the tender for a six year length. As a result, the network as changed a lot and the municipality is pleased.

Very interesting contracts have also recently been used in the Amsterdam City Region with very incentivised measures without 'lump-sums'. The procedure is a particular one as such as the competitive tendering is based on a 'mathematical' multi-criteria evaluation. As describe in *Competitive tendering in the Netherlands : Central Planning or functional specifications?* by van de Velde, 2007, the whole payment to the operator is function of the realized ridership. The amount of compensation per passenger-km is a criterion in the bidding to determine the operator, and is equal to the pre-determined budget of the OA divided by the promised passenger ridership for each year. The real number of passenger-km condition the real subsidisation with the initial ratio determined at the bidding.

Figure C: principles in short of the Amsterdam Region contracts



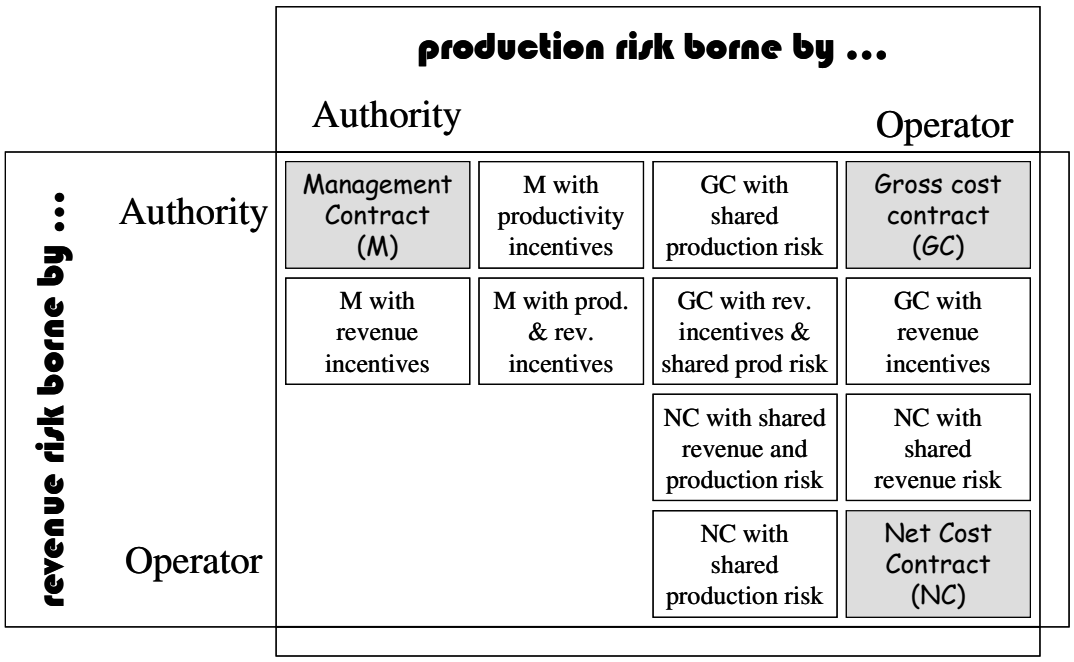
Appendix 2

Contracts sample

As presented in the report, the most usual way to classify Public transport contracts in the literature is related to the allocation of the industrial (production) and the commercial (revenue) risks. There are three mains kinds of contracts : the Management contracts (M), the Gross Cost contracts (GC) and the Net Cost contracts (NC).

But in most of the cases, the risks are shared. The following table, taken from van de Velde, presents the sample of contract types that are used.

Figure D: classification of the public transport contracts



Appendix 3

résumé en français

Les contrats entre les Autorités Organisatrice de Transport Urbain (AOTU) et les Opérateurs de transport définissent les relations entre les deux acteurs et la répartition des responsabilités. Les contrats sont donc une pièce maîtresse de l'organisation des transports publics urbains dans la ville. Cependant, au cours des deux dernières décennies, des changements significatifs ont pu être observés dans les pratiques, avec notamment une tendance à l'augmentation de l'usage de contrats et de compétition. Dans ce contexte de changement des pratiques, qu'est-ce qui fait le succès d'un contrat ? Cette question fut à l'origine du projet européen de comparaison des pratiques, les participants souhaitant améliorer leurs connaissances et leurs conseils aux autorités. Afin d'aller plus profondément dans le sujet, une analyse de quelques pratiques intéressantes était nécessaire.

Le contexte français présente quelques particularités intéressantes, et des pratiques variées. C'est pourquoi ce rapport s'intéresse particulièrement à la situation française. Il s'organise en un zoom depuis le contexte européen vers le niveau tactique des contrats français. De nombreuses études ont été publiées sur les contrats français et les impacts des choix organisationnels, mais, à mon sens, la plus-value du présent rapport est son intérêt pour la répartition des responsabilités tactiques et l'analyse des impacts des spécificités contractuelles françaises. Ce travail concerne donc les spécificités françaises et les raisons de leurs mises en place, par rapport à d'autres pratiques en Europe. Il n'évalue cependant pas l'efficacité des différentes pratiques, en partie faute de données qualitatives. Par ailleurs, cette question sera traitée dans le projet européen d'Inno-v. Le travail réalisé ici pourra servir de base de comparaison.

Le rapport est organisé en deux parties. La première présente le cadre institutionnel et légal en Europe puis en France, permettant une meilleure compréhension du contexte européen et du vocabulaire utilisé dans la littérature. Dans ce dessin général, le cadre légal français est également présenté, ainsi que l'organisation qui en découle. La seconde partie traite des spécificités des contrats français, comparées à ce qui peut être fait ailleurs en Europe. Un paradoxe français est alors mis en lumière : l'inadéquation entre les risques supportés par les opérateurs et la liberté dont ils disposent. La dernière sous-partie s'intéresse aux impacts des pratiques françaises, comme barrière ou non pour une évolution vers un meilleur équilibre des responsabilités.

Partie I – Cadre légal et institutionnel

Les deux dernières décennies ont été témoins de changements significatifs dans le cadre organisationnel du transport public urbain en Europe. Ces développements ont été promus par la Commission Européenne par le biais d'un cadre légal approprié au niveau européen, comme proposé initialement dans le livre vert, et plus tard renforcé et clairement indiqué dans la communication de la commission « Développer le réseau des citoyens ». De la même manière, très récemment, la *proposition de règlement européen sur les Services Publics de transport de voyageurs* a été adoptée par le parlement européen.

Ces changements ont été réalisés dans un objectif d'amélioration de la transparence, de l'efficacité économique et de la qualité de service dans le transport public urbain de personnes. Ils ont été mis en application de manière différente dans chacun des pays européens, mais une caractéristique commune est un recours plus fréquent à une forme de compétition.

I- Le contexte Européen

I- 1. Une nouvelle réglementation européenne[28]

La réglementation européenne actuelle est le règlement 1191/69 (du 26 juin 1969 modifié en 1991 pour inclure les transports locaux), qui donne aux autorités le droit d'imposer à un opérateur des caractéristiques d'exploitation d'un Service Public (tarifs, qualité,…) contre compensation financière. Dans les années 90, une grande partie des pays européens ont introduit des appels à concurrence pour choisir l'opérateur, mais de manière variée, amenant à une inégalité entre les opérateurs (certains avaient leur marché protégé mais pouvaient attaquer des marchés extérieurs). La Commission Européenne a donc souhaité harmoniser les procédures avec la proposition de règlement sur les Services Publics de transport de voyageurs. Après 10 ans de discussion et de compromis, le texte vient (finalement) d'être adopté par le parlement (mai 2007) et devrait être également adopté par le conseil des ministres. Il devrait entrer en vigueur en 2009. Le texte a été simplifié et n'aura que peu d'impact pour certains pays européens comme la France.

[28] Van de Velde, 2007, A new regulation for the European pubic transport, presented à the Thredbo conference 2007 in Australia.

I- 2. Les formes organisationnelles

Deux principales formes (introduites par van de Velde en 1999[29]) sont habituellement utilisées : leur distinction est très fortement liée au contexte légal de chaque pays et elles montrent une différence fondamentale dans l'organisation de l'offre :

Initiative de l'Autorité : les autorités ont légalement le monopole de l'initiative. Cela signifie que toute production ou toute entrée dans le marché est le résultat d'une décision unilatérale de l'autorité de produire ou de faire produire un service (c'est notamment le cas en France). Il est courant, au sein de ce cadre légal, de faire une distinction entre « concession privée » et « propriété de l'autorité » (qui peut toutefois être gérée par une compagnie privée).

Initiative du marché : ici, l'offre des services de transports est basée sur le principe de l'entrée autonome d'une compagnie sur le marché, résultant d'un processus intégrant plus ou moins de contrôle à l'arrivée sur le marché (la Grande Bretagne, et l'Allemagne sont sous ce régime). Ce régime peut être « ouvert » ou alors « sous régulation de l'autorité » auquel cas l'entreprise reçoit un droit temporaire ou permanent d'exploitation, avec différents niveaux d'exclusivité.

Notons que ces distinctions sont faites à un niveau essentiellement théorique. Dans la pratique, les organisations peuvent être des combinaisons de ces cas « purs ».

I- 3. Différents niveaux de planification

Le système de planification et de contrôle du service de transport peut être divisé en trois niveaux hiérarchiques de décisions, comme introduit par van de Velde, 1999. La dénomination usuelle est la suivante :

Niveau stratégique : ce niveau concerne la formulation des principaux objectifs généraux et des caractéristiques du service. Cela inclut les objectifs de profit et de part de marché, le périmètre desservi, la description générale des services, la définition des groupes ciblés et les relations intermodales.

Niveau tactique : il s'agit de prendre les décisions et d'acquérir les moyens qui peuvent permettre d'atteindre les objectifs généraux définis au niveau stratégique. Les objectifs stratégiques sont traduits en caractéristiques des services tels que la définition des lignes, des horaires, des véhicules, des tarifs, des aspects commerciaux, etc.

[29] van de Velde, *Organisational forms and entrepreneurship in public transport* (1999)

Niveau opérationnel : ici, le rôle des acteurs décisionnels est de s'assurer que les consignes définies aux niveaux hiérarchiques supérieurs sont suivies, et d'une manière efficace. C'est la traduction des choix du niveau tactique à la vie de tous les jours du service de transport, avec des sujets tels que la gestion des personnels des agences commerciales, des conducteurs, des véhicules et de l'infrastructure.

I- 4. La classification habituelle des contrats; répartition des risques

La répartition des responsabilités et le partage des risques entre les différents acteurs du système de transport sont des outils essentiels de gestion des transports publics. Ainsi, une des principales caractéristiques des contrats qui permet une classification des pratiques est liée à la répartition des risques. Deux risques sont définis : le **risque industriel** (ou risque de production) qui est le risque associé aux coûts de production et aux dépenses d'exploitation, et le **risque commercial** (le risque sur les recettes) qui est lié à la vente des tickets de transport et aux recettes qui en découlent. Les différentes possibilités de répartition de ces risques permettent de classifier en trois classes les principales pratiques contractuelles.

Contrat de gérance : L'Autorité Organisatrice (AO) supporte les deux risques, industriel et commercial. Elle a l'entière responsabilité du transport public de voyageurs, récupère les recettes et rembourse à l'exploitant ses dépenses. La rémunération du délégataire dépend généralement du volume de l'offre.

Contrat de Gestion à Prix Forfaitaire : L'opérateur supporte le risque industriel tandis que l'AO est responsable de la dimension commerciale. Dans ces contrats, c'est l'AO qui perçoit les recettes (souvent, c'est l'opérateur qui les perçoit et les reverse à l'AO). L'autorité verse à l'exploitant une somme prédéterminée, fonction des coûts d'exploitation pré-estimés lors de la signature du contrat. Ainsi, l'exploitant supporte effectivement un risque industriel puisque si les coûts sont différents de ceux escomptés, il assume financièrement la différence.

Contrat à Contribution Financière Forfaitaire : Dans ce cas là, c'est l'exploitant qui supporte tous les risques. Il perçoit les recettes commerciales pour son propre compte et reçoit de l'Autorité Organisatrice une contribution financière supplémentaire, fixée dans le contrat, pour compenser la différence entre les recettes et les coûts d'exploitations.

Cette représentation des contrats est la plus commune, mais elle n'est pas tout à fait fidèle à la réalité où les arrangements contractuels sont plus variés. Certains contrats sont plus complexes : les risques sont souvent partagés entre les deux acteurs.

II- Le cadre légal Français

II- 1. Le contexte légal

Le transport public de voyageur est considéré en France comme un élément important, tant au plan économique que social. Cela explique la forte implication de l'Etat dans ce secteur. Le transport public urbain en France est régulé principalement par deux récentes lois.

Loi d'Orientation des Transports Intérieurs (LOTI, 30 décembre 1982)

Toute l'organisation des transports publics urbains s'appuie sur la LOTI, qui a donné en 1982 la responsabilité du transport urbain aux collectivités locales. Cette loi a également défini la notion de droit au transport et de service public, et a rendu obligatoire la signature d'un contrat d'exploitation de transport urbain. La responsabilité des Autorités Organisatrices a par la suite été renforcée par différentes lois telles que la Loi sur l'Air et l'Utilisation Rationnelle de l'Energie (LAURE, 1996), la loi Voynet (1999), la loi Chevènement (1999) et la loi de Solidarité et Renouvellement Urbains (SRU, 2000).

Loi Sapin (29 janvier 1993)

Avant 1993, la procédure de sélection était fondée sur la négociation. La loi Sapin a complexifié la procédure en imposant trois étapes[30] : un appel d'offre, une sélection des candidats, et une étape de négociation avec les candidats. L'autorité choisit au final son exploitant selon le principe de *l'intuitu personae*. L'idée de cette procédure est de permettre une comparaison des offres par le biais de l'appel d'offre, et de négocier ensuite avec les exploitants sur cette base.

II- 2. La forme organisationnelle Française

L'organisation française est sous l'initiative de l'autorité. L'exploitation en Régie est une possibilité mais est aujourd'hui minoritaire (10 % des cas en 2003), la Délégation par contrat étant plus utilisée (23 % à des Sociétés d'Economie Mixte, et 77 % à des compagnies privées). Selon le GART[31] (Groupement des Autorités

[30] CERTU, January 2003, Urban public transport in France, Institutional organization
[31] GART, 2004, Coordinated Approaches to expanding Access to Public Transportation

Responsables de Transport), la majorité des délégations sont des contributions forfaitaires (62 %). Seul 27 % des délégations sont à Prix forfaitaires, 4 % sont des concessions et 7 % des contrats de gérance.

Dans la plupart des cas, l'Autorité Organisatrice (AO) est propriétaire des infrastructures, des équipements et du matériel roulant, et les met à disposition du délégataire.

II- 3. Les principaux Acteurs

Le rôle des Autorités Organisatrice est primordial dans l'organisation des transports publics urbains en France. Elle est responsable, dans le Périmètre de Transport Urbains, de l'organisation du service public et définit la politique de transport avec les autres intervenants. De manière concrète, l'AO définit les Plans de Déplacements urbains et l'offre de transport, finance le développement des réseaux et fait la promotion du transport public.

Les AO ont la possibilité de déléguer l'exploitation du service de transport (c'est le cas dans plus de 90 % des cas). En France, l'exploitation est généralement déléguée à un unique exploitant. Soulignons qu'en France, trois grands groupes réunissent près des deux tiers des exploitations de réseaux (en % de réseaux)[32] : KEOLIS (35 %), TRANSDEV (15 %) et VEOLIA Transport (16 %). AGIR est une association crée par des Autorités, et ces membres sont liés au domaine public (Sociétés d'Economie Mixte et EPICs) ; sa part de marché avoisine les 8%. Le reste du marché est détenu par des entreprises non affiliées.

[32] Ces pourcentages sont tirés de CERTU, 2003.

Partie II – les contrats français et leur niveau tactique

Jusqu'à récemment, la législation française en termes de transport public urbain était plus élaborée que la législation européenne. Il est même parfois dit que la proposition de la réglementation sur les Services Publics de transport de voyageurs est inspirée du modèle français[33]. Dans ces conditions, le cas français semble particulièrement intéressant à étudier. Dans cette deuxième partie, je m'intéresse aux particularités des contrats français ; quelles sont ces particularités ? Quels en sont les impacts sur les responsabilités tactiques ? Quel niveau de liberté tactique ont les exploitants français ? Peuvent-ils en avoir plus ?

Afin de répondre à ces questions, je présenterai tout d'abord les particularités des contrats français afin de montrer dans quelle mesure le cas Français est original. Je m'intéresserai alors à la répartition du niveau tactique en France, qui constitue un paradoxe face aux évolutions récentes de risques supportés par le délégataire. Enfin, j'analyserai les barrières qui limitent les libertés tactiques dont disposent les opérateurs, et je tenterai de voir dans quelle mesure cette situation peut évoluer.

I- Ce qui fait la particularité des contrats français

De nombreuses spécificités sont intéressantes pour comprendre pourquoi les relations AO – Opérateurs sont comme elles sont en France. Avant de m'intéresser plus en profondeur au niveau tactique, je souhaite présenter ici quelques originalités françaises.

I- 1. Négociation et intuitu personae

La négociation est généralement associée à des pratiques douteuses et anticoncurrentielles, et est illégale dans de nombreux pays (comme par exemple les Pays-Bas). Ainsi, alors que la loi Sapin était une réaction à des pratiques

[33] Anne Yvrande-Billon, 2005, The attribution process of delegation contracts in the French urban public transport sector : why competitive tendering is a myth.

anticoncurrentielles, avec pour but de rendre la procédure plus transparente, pourquoi la législation française a-t-elle choisi de conserver cette phase de négociation et le principe d'intuitu personae ? Le terme d'intuitu personae pourrait être traduit en français par « en fonction de la personne » [34], ce qui signifie que le contrat est signé avec un individu physique et non pas avec une personne morale; la personne de la partie cocontractante ou ces principales caractéristiques pourraient conditionner la conclusion du contrat. Mais pourquoi a-t-on conservé le principe d'intuitu personae pour les contrats de délégation de service public alors que les Marchés Publics suivent une procédure très contraignante où le choix dépend de critères prédéfinis ?

La distinction entre Marché Public (MP) et Délégation de Service Public (DSP) est source d'erreurs. La loi Murcef de Décembre 2001 a clarifié les choses en définissant une DSP comme « un contrat par lequel une personne de droit public confie la gestion d'un service public dont elle a la responsabilité à un délégataire public ou privé dont la rémunération est substantiellement liée au résultat d'exploitation du service ». La DSP, par opposition au MP, est un contrat d'objectifs et non de moyens (la mission étant particulièrement complexe à décrire) et le payement doit être lié aux usagers. Dans l'idée du législateur français[35], la complexité du service public de transport urbain justifie le recours au principe d'intuitu personae.

La négociation permet à l'autorité de passer plus de temps en discussion avec l'exploitant et de choisir celui avec qui elle pourra travailler. Elle permet également de limiter les comportements opportunistes des entreprises privées qui réduiraient alors les chances de l'entreprise d'être sélectionnée à un prochain appel d'offre. C'est également un moyen pour l'exploitant de pouvoir se valoriser pendant la procédure en proposant des innovations au cours de la négociation. Par ailleurs, l'autorité doit être en mesure de justifier son choix devant une entreprise non retenue, et la décision est contrôlée au niveau régional (Yvrande-Billon, 2005). D'un autre coté, l'intuitu personae peut avoir un impact négatif dans la mesure où l'exploitant voudra faire plaisir à son autorité en suivant ses décisions et perdra donc sa qualité d'innovation. En effet, selon M. Ferraris, un amendement initié par l'exploitant peut être mal perçu par l'AO et diminuerait ses chances de sélection lors d'un appel d'offre ultérieur.

I- 2. Le Financement des transports publics ; le 'Versement Transport'

La LOTI, dans son article 1, reconnaît que le transport concourt, entre autres, « au développement économique et social, à l'aménagement équilibré et au développement durable du territoire (…) »[36]. L'usager n'est donc pas le seul

[34] Dictionnaire juridique et contractuel des affaires et projets, www.lawperationnel.com/Dictionnaire_Juridique
[35] Selon M. Marty, juriste de VEOLIA Transport, lors d'un entretien à Paris en Juillet 2007
[36] www.legifrance.fr

bénéficiaire du transport public et ne doit donc pas être le seul à en supporter les coûts[37]. De plus, les prix sont volontairement maintenus à un prix relativement bas pour assurer l'accès au transport à un coût raisonnable, ce qui peut expliquer également que le transport ne soit jamais équilibré sur le plan financier en France (les recettes commerciales ne couvrent pas plus du tiers des coûts d'exploitations (hors investissement) et près de 20 % en moyenne si on considère les investissements[38]).

Alors qui finance les surcoûts ? L'Etat, bien sûr, donne des subventions, mais sa contribution diminue au fur et à mesure qu'il responsabilise les AO. En 2005, sa participation représentait seulement 1,55 % des coûts totaux. Les AO, quant à elles, participent de plus en plus et couvraient en 2005, 33,75 % des coûts. Pour arriver à l'Equilibre, les autorités ont recours à une Taxe appelée le «Versement Transport » (ou VT), initialement mise en place dans la région Île-de-France en 1971. Cette taxe touche les entreprises de plus de 9 salariés, installées dans le Périmètre des Transports Urbains. Aujourd'hui, toute agglomération de plus de 10 000 habitants peut y avoir recours (les taux sont encadrés par l'Etat) sous prétexte que les entreprises installées dans le PTU retirent un avantage indirect du système de transport et participent à la congestion lors des heures de pointes.

La contribution des entreprises pour l'année 2005 couvrait 45 % des coûts ! L'augmentation du VT a jusqu'ici permis de faire face à l'augmentation des coûts du Transport public, mais, selon la Cour des Comptes[39], il semble difficile de continuer de l'augmenter, et les AO devront trouver un autre moyen de financement. Des idées telles que les péages urbains (qui ont montré leur efficacité à Londres ou à Stockholm) sont étudiés, mais impossibles à mettre en place dans le cadre légal d'aujourd'hui. La Cour des Comptes suggère une augmentation des participations usagers et une lutte contre la fraude plus soutenue.

I- 3. Un exploitant pour un réseau

La grande majorité des réseaux français sont exploités par un unique délégataire. Pourtant l'AO est libre de choisir l'organisation du réseau, et de plus en plus de grandes villes européennes (Londres, Stockholm, Helsinki, Rome, …) ont alloti leurs réseaux. Cela nous amène à nous interroger sur l'intérêt et les impacts de l'allotissement.

Yvrande, 2005, explique qu'un important problème dans le contexte français est le manque de réelle concurrence, malgré l'utilisation d'appel d'offres. Une part de

[37] CERTU, 2003, Urban public transport in France
[38] GART 2005, L'année 2005 des Transports Urbains
[39] Les transports publics urbains, rapport au président de la république, Cour des comptes, 2005 (p.156)

l'explication est le fait que trois grands groupes détiennent plus des 2/3 des réseaux (et avaient des ententes pour maintenir des prix élevés[40]), et les petites entreprises ne sont pas assez fortes pour gagner des réseaux entiers. De ce point de vue, l'allotissement pourrait améliorer la qualité de la concurrence ; l'exemple de Londres a mené à une augmentation du nombre d'offrant et une réduction des coûts d'exploitation[41].

Le monopole permet lui, des économies d'échelles et l'allotissement pourrait multiplier le nombre de procédures et ainsi augmenter les coûts de transactions. De plus, les AO auraient à coordonner tous les lots afin d'avoir un réseau cohérent, ce qui semble délicat vu le manque de compétences actuelles de certaines AO. Notons toute fois que l'exploitation du Réseau d'Île-de-France est déléguée à plusieurs exploitants. La ville de Perpignan a également confié l'exploitation de son réseau à deux entreprises (espagnoles), mais cela reste anecdotique en France.

I- 4. Le matériel roulant et le personnel

Dans la plupart des réseaux français, l'AO est propriétaire du matériel roulant et le met à disposition de l'exploitant. Selon la Cour des Comptes (rapport de 2005), cela permet de clarifier le rôle de chacun des cocontractants.

La raison première, selon B. Faivre d'Arcier, est historique. Jusque dans les années 70, les communes n'avaient pas la possibilité de faire des emprunts sur les marchés financiers. Dans les années 80, face aux déficits des opérateurs (succès de la voiture particulière et exode rurale) qui n'arrivent plus à renouveler le matériel roulant, l'Etat décide la mise en œuvre de contrats de développement des transports collectifs afin de financer le renouvellement du matériel. Puis, il s'est avéré plus intéressant de rester sous cette organisation dans la mesure où les AO ont obtenus la possibilité de récupérer la TVA et des prêts à taux très attractifs puisque garanti par la signature du Trésor Public (d'après B. Faivre d'Arcier).

La raison première était concernait donc le contrôle de qualité. Cependant, d'autres raisons sont venus appuyer cette organisation : Il y a moins d'interdépendance entre les parties si l'exploitant ne fait pas de gros investissement. Les contrats français stipulent aussi que lors d'un changement d'exploitant, le nouvel entrant se doit de reprendre le personnel de l'ancien et dans les mêmes conditions. Ces particularités ont pour objectif[42] de réduire l'avantage de l'entreprise en place lors du renouvellement de contrat. De plus, les AO peuvent acheter du matériel avec des prêts à taux très

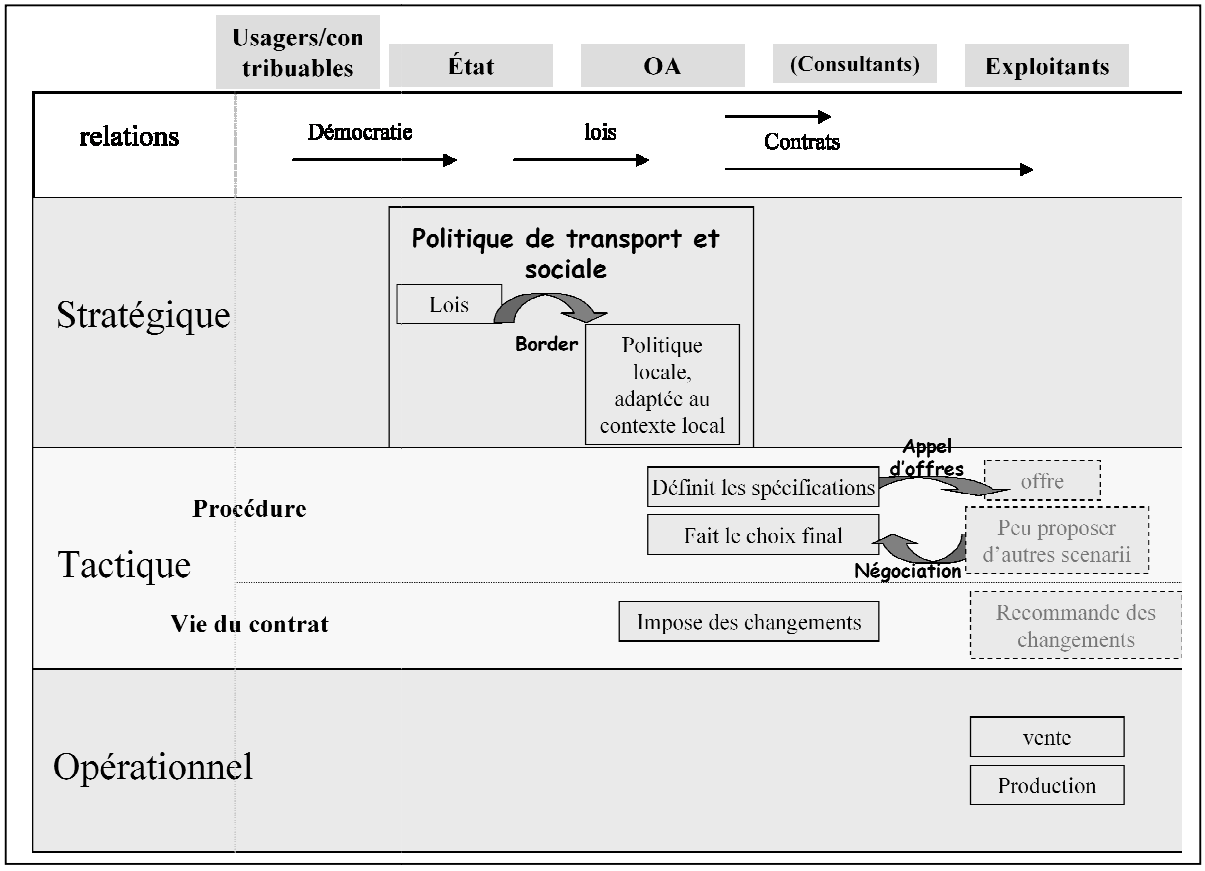
[40] Conseil de la concurrence : 19ième rapport annuel, 2005.
[41] Compte rendu du séminaire CRIA du 04.05.07, intervention d'Anne Yvrande-Billon, Université Paris 1, ATOM.
[42] Yvrande-Billon, 2005. voir précédemment.

intéressants dans la mesure où leur signature est celle du Trésor Public, ce qui constitue une excellente garantie pour les banques.

Dans d'autres pays européens, le matériel roulant peut être la propriété de l'exploitant, ou parfois de sociétés de leasing qui louent à l'exploitant le matériel le temps du contrat. L'avantage du leasing est une meilleure flexibilité pour l'exploitant dans ses investissements, et donc un meilleur dynamisme sur les opportunités du marché sans se soucier d'investissements à long terme.

II- Le paradoxe des contrats français: le niveau tactique

Figure 1: planning levels in the French Framework



II- 1. Des contrats de plus en plus risqués

Les pratiques contractuelles ont évolué très rapidement ce dernier quart de siècle. La LOTI a été introduite en 1982 afin de clarifier les relations entre Autorités et exploitants en imposant la signature de contrats. La loi Sapin de 1993 a renforcé la procédure de passation de contrat en imposant l'usage d'appel d'offres afin d'assurer

une concurrence plus équitable. Et depuis la fin des années 90, les contrats se complexifient considérablement[43], pour devenir aujourd'hui les contrats les plus évolués du service public.

Dans la gestion du service de transport, un glissement des Régies vers les Délégations de Services Publics a été observé. L'objectif était de transférer le risque social vers un acteur privé et de stabiliser les budgets. Aujourd'hui encore, les autorités continuent de responsabiliser les entreprises en leur confiant plus de risques. Yvrande-Billon[44] note effectivement que la majorité des changements de type de contrats observés est faite vers des contrats plus risqués pour l'exploitant.

II- 2. La liberté tactique en Europe

Ce glissement vers plus de responsabilisation des entreprises est également apparu dans d'autres pays européens ; ce processus est généralement réalisé afin d'inciter à plus d'efficacité, et se justifie par le fait que l'exploitant a un contact journalier avec les usagers et est ainsi plus apte à comprendre les besoins du marché. Cette responsabilisation est généralement accompagnée par plus de liberté pour le délégataire.

Pendant la passation du contrat

La réforme des transports aux Pays-Bas a été introduite par la loi sur le transport de passager 2000, dont l'objectif était de donner plus de liberté à l'opérateur et une meilleure définition des politiques par les AO[45]. Les AO perçoivent un montant fixe de l'Etat qui ne peut être utilisé que pour le transport. Ainsi, les appels d'offres sont orientés vers une maximisation de l'offre pour un montant donné et non pas vers une réduction du coût pour un service déterminé. L'exploitant est donc invité à proposer un service. Le cas d'Amersfoort est intéressant : l'exploitant doit proposer un nouveau réseau dans son offre, avec des minima de service fixés par l'AO du type « 95% des habitations de la municipalité doit se trouver à une distance d'au plus 400m d'un arrêt de bus ». L'exploitant supporte le risque commercial, avec un bonus/malus sur l'évolution de la fréquentation par rapport à l'année précédant le contrat. Le réseau a considérablement changé et la municipalité est satisfaite[46].

[43] Propos recueillis auprès de M. P. Marty, juriste de Véolia Transport

[44] A. Yvrande-Billon, 2005, *The Attribution of delegation contracts in the French urban public transport sector : why is competitive tendering a myth ?* paper presented at the 9th thredbo conference at Lisbon in 2005.

[45] Competitive tendering in the Netherlands : central panning or functional specifications ? by Didier van de Velde, Lars Lutje Schipolt and Wijnand Veeneman, 2007, paper presented at the 10th Thredbo conference in Australia.

[46] First experiences of tendering at the tactical level (service design) in Dutch public transport, van de Velde and Erik Pruijmboom, Transport Economics, Erasmus University Rotterdam (The Netherlands) 2005

Pendant la vie du contrat

Les contrats PBC (Performance-Based Contracts) de Norvège sont également intéressants ; l'exploitant est libre de dessiner le réseau comme il le souhaite (avec également quelques requêtes de l'AO). Le réseau est sujet à des enquêtes de satisfaction régulières, et si la satisfaction est inférieure à 90% des objectifs affichés, l'AO est libre d'annuler le contrat et de choisir un nouvel exploitant[47]. Mais ces PBC présentent un intérêt particulier par leur schéma de paiement original ; l'objectif était d'internaliser dans les considérations de l'exploitant les externalités liées au transport. Pour cela, le paiement est lié à trois indicateurs : les bus-kilomètres, la capacité des bus (pour rendre compte des bénéfices retirés d'une amélioration de la fréquence du service et d'une réduction de la foule pour les utilisateurs du réseau) et le nombre de passagers (pour les réductions des externalités de l'usage de la voiture par le report modal vers les TC).

II- 3. Moins de libertés d'action en France

En Europe donc, lorsque plus de responsabilités sont supportées par l'exploitant en termes de risques, une certaine liberté tactique est également confiée. Certaines incitations peuvent même être ajoutées afin de stimuler l'usage de cette liberté d'action. En France, il semble que cet équilibre entre risques supportés et marge de manœuvre n'existe pas.

Le point intéressant de la procédure Sapin est le fait qu'elle combine l'usage d'appel d'offres et de négociation. Ainsi, comme expliqué par M. Ferraris, la tendance s'oriente vers des contrats de plus en plus détaillés mais également une plus grande marge de proposition par l'exploitant, aussi bien lors de l'appel d'offres que lors de la négociation. Ainsi, même si le choix final reste de toutes manières la responsabilité de l'AO, l'exploitant reste une force de proposition considérable, et possède ainsi une certaine forme de liberté tactique.

Par contre, au cours de la vie du contrat, l'exploitant ne dispose quasiment d'aucune marge de manœuvre. En effet, tout est spécifié, jusqu'aux plus petits détails, et l'usage d'amendements sur l'initiative de l'exploitant n'est pas bien perçu (mauvaise image auprès de l'AO, diminue les chances de sélection au prochain appel d'offres dans lequel l'intuitu personae a un lourd poids) ; les changements sont généralement de l'initiative de l'AO.

Il y a donc un paradoxe dans la gestion française des transports publics urbains de personnes, dans la mesure où de plus en plus de risques sont supportés par

[47] Quality tendering and contracting service design; comparing the Dutch and Norwegian initiatives, by Bård Norheim and Frode Longva, 2005, paper presented in the 9th Thredbo conference in Lisbon

l'exploitant alors que moins en moins de liberté (pendant la vie du contrat) est laissée au délégataire.

III- Analyse des barrières du niveau tactique

Nous avons observé que, comme d'autres Etats européens, la France tend vers de plus en plus de risques supportés par l'exploitant. Cependant, contrairement aux autres pays, les exploitants en France n'ont que très peu de liberté. Cette partie s'intéresse aux barrières qui ont, ou qui peuvent, interférer dans le transfert de libertés tactiques. Pour cela, par analogie avec le travail de van de Velde, Veeneman et Schipholt pour les Pays-Bas[48], l'analyse de ces barrières est faite avec une classification inspirée de Williamson[49] (the New Institutional Economics) qui prend en compte 4 niveaux : Coutumes et traditions, Cadre légal et réglementaire, Gouvernance, Contrats.

III- 1. Des barrières franchissables?

Un certain nombre de barrières sont apparues, tels que le cadre légal défini par la LOTI, un manque de confiance dans les entreprises privées qui privilégieraient leurs recettes aux dépends des valeurs de service public, une décomposition de la France telle que différentes autorités se partagent parfois des compétences sur le transport, etc. Il s'avère cependant que l'essentiel de ces barrières se situent au niveau du *Cadre légal et réglementaire*. En effet, il semble que la plus importante barrière soit la LOTI qui, reprenant les termes du Code Général des Collectivités Territoriales (C.G.C.T.), définit le transport public urbain de personnes comme la responsabilité de l'AO, qui peut certes déléguer l'exploitation du service, mais ne peut abandonner la responsabilité transport.

La LOTI est le fondement de la réglementation actuelle des transports publics en France. Il est difficilement envisageable de la modifier entièrement du jour au lendemain, d'autant que malgré les nouvelles réglementations européennes, la LOTI reste applicable. Ce à quoi l'on peut s'attendre est plutôt une augmentation des libertés tactiques (essentiellement au cours de la passation des contrats ; propositions de scénarii différents du cahier des charges par exemple) mais avec une forte présence des autorités locales qui conserveraient leur pouvoir de décision.

[48] Service design in competitive tendering in the Netherlands, shifts between authorities and operators, Van de Velde, Veeneman and Schipholt, 2006, paper for the European Transport conference.
[49] Williamson, O.E. (2000). The New Institutional Economics: Taking Stock, Looking Ahead, *Journal of Economic Literature,* **38,** 595–613.

III- 2. Une volonté de changement ?

Ce changement est d'autant moins probable qu'il n'est pas certain qu'il soit désiré, que ce soit du côté de l'AO ou de celui de l'exploitant. En effet, même si les exploitants souhaitent une plus grande marge de manœuvre, les contrats français sont globalement peu risqués ; selon la Cour des Comptes, les opérateurs ne supportent quasiment pas de risque d'investissement, peu de risque commercial, et le risque industriel est généralement limité par des clauses qui protègent l'opérateur dans le cas de baisses de fréquentation qui ne lui seraient pas imputables. Du côté des autorités locales, le transport public urbain se révèle être un outil politique fort que les AO ne souhaitent probablement pas léguer.

Conclusion

Dans un contexte d'évolution des pratiques contractuelles européennes dans les transports publics urbains de voyageurs, nous avons vu que le cas français présente des particularités intéressantes. La première, notable, est l'implication particulièrement forte des autorités publiques dans les Services Publics, notamment le service public de transport public de voyageurs, et cela se ressent dans les relations Autorité-Exploitant définies par les contrats et dans la répartition des responsabilités.

Le transport public a des impacts économiques, sociaux et environnementaux qui justifient l'intervention de l'Etat qui participe à la définition des politiques de transports aussi bien qu'au financement. Cependant, on observe depuis plusieurs années un transfert de risques de l'autorité vers l'exploitant, et, tandis que dans certains pays, ce transfert de risque est accompagné d'un transfert de liberté tactique, les autorités françaises conservent, pour le moment, la responsabilité de la définition du service et de ses caractéristiques.

Cette inadéquation entre risques supportés par l'exploitant et libertés tactiques est due à un environnement réglementaire et légal hérité du fonctionnement d'un état centraliste qui donne les pleins pouvoirs aux autorités organisatrices de transports urbains. Les barrières qui entravent un rééquilibrage des rôles sont fortes (LOTI) mais pas insurmontables, pour peu que l'on veuille les surmonter. Mais on constate que les autorités (conservant la mainmise sur un outil politique fort) ainsi que les exploitants (qui bénéficient de contrats peu risqués) semblent satisfaits de la situation. Et de fait, le système semble marcher. De plus, il faut également souligner l'importance du rôle de conseil du délégataire.

Il serait cependant intéressant de comparer ces pratiques, en termes d'efficacité économique au moins, avec ce qui peut être fait ailleurs. Il s'agit là, selon moi, de la limite de cette étude : ne pas pouvoir conclure sur le fonctionnement du système français comparé à celui d'autres Etats membres. Mais cela fait partie de l'étude générale pour laquelle ce mémoire a été écrit.